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THE AMERICAN SYSTEM OF JUSTICE

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Current History

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How can the administration of justice best be improved in the United States? With this issue, Current History opens a 3-part symposium on justice in America, its framework, its operations, and the possibilities for its improvement. As our introductory article points out: "We are facing in the United States a grave loss of legitimacy of the legal order. . . . To restore legitimacy and to cure the alienation of many Americans from the legal order will require more than the reform of justice. . . . Yet in this effort justice has a critical role to play. . . ."

Freedom, Order and Justice

By Francis A. Allen
Dean, The University of Michigan Law School

Justice plays a central role in the life of all countries. This is as true of the United States as of other nations, even though we have been more neglectful of the administration of justice than many. The framers of the Constitution left no doubt about the importance they accorded the function of justice in the government they were creating. In the Preamble to the Constitution the framers aspired both to "the blessings of liberty" and to "domestic tranquility."

This dual theme of freedom and order emerges again and again throughout our history. In dedicating the new government to both objectives, the framers obviously rejected the notion that freedom and order were irreconcilable; indeed, they believed each in the long run to be indispensable to the other. The framers were practical men and well aware that although private violence may be the enemy of liberty, liberty may also be damaged or even destroyed by efforts of state officials to suppress private violence. This is the significance of the fact that four of the amendments in the original Bill of Rights expressly regulate the administration of criminal justice and several others have relevance for the criminal process. The American constitutional tradition, therefore, accords high importance to freedom and order, and recognizes a continuing necessity for the proper reconciliation of both values if either is to be fully realized.

Why have the problems of justice produced such concern and anxiety in recent years? Why is the criminal law and its administration important? No very satisfactory response can be made to these questions without a good deal of inquiry and discussion. Even so, it may be useful to attempt some partial answers. The law—particularly the criminal law—is important, first, because of what it seeks to accomplish. Surely one of the principal purposes of the criminal law is to prevent or discourage behavior known to be dangerous to certain basic interests of man-

kind. What are these interests? They include matters no less important than the protection of men from death and physical injury by unauthorized violence or carelessness. They include also the security of men in their possessions—their homes, their wealth, their tools—from misappropriation and destruction. To obtain fuller protection of these and other basic human interests has always been one of the primary goals of organized society.

There are other reasons for regarding the criminal law as important, however. One of these relates to the nature of criminal penalties or sanctions. Apart from international conflict or civil war, it is in the administration of the criminal law that the government subjects individuals to the most drastic exertions of state power. Criminal sanctions may deprive convicted offenders of their property through fines, their liberty through imprisonment, and even their lives through capital punishment.

The severity of these penalties is evidence of the high value organized societies have placed on the security of life, limb and possessions. Yet as history has frequently demonstrated, these great powers are *capable* of being abused and of being exercised for unauthorized and unjustifiable ends. When this occurs, the apparatus of justice not only fails to give protection to the basic interests it was designed to defend, but may become the engine for their destruction. It is no accident, after all, that one of the first objectives of an emerging totalitarian regime is to gain control of the internal police. Another reason for the importance of justice, therefore, is the necessity for continuing vigilance to insure that the drastic powers exercised by the criminal law are not employed to destroy vital human and political values.

THE "SUBSTANTIVE" CRIMINAL LAW

Fundamental to any system of justice is that body of law or custom which defines conduct that is criminal and subject to penalty. Although most persons today think of the criminal law as a product of legislatures, many of the characteristic crimes in the Anglo-American legal system were first defined by judges; and even in jurisdictions like the federal government that have abolished "common-law crimes" many of the general principles actually applied by the courts are not to be found in statutes, but derive from the common law of England and the United States.

The "substantive" criminal law is basic because it determines what conduct is criminal and the penalties that can be lawfully imposed on those who engage in such conduct. Is a man who smokes a marihuana cigarette a criminal? What about the man who bets on the outcome of a college basketball game, who uses deadly force against an assailant without first taking advantage of a reasonable opportunity to retreat, or who offers corporate securities for sale in a prospectus that inaccurately describes the financial condition of the company? None of these questions can be answered without first referring to the substantive criminal law of the state or country in which the conduct occurred. The central questions addressed by the substantive criminal law are, therefore: Who is the criminal? Who *ought* to be the criminal? What penalties shall be authorized for his punishment?

The substantive criminal law performs another function that may at first be overlooked. When the legislature enacts a statute defining larceny, for example, it authorizes the exertion of state power against the person suspected of crime. The individual may be arrested, deprived of his liberty prior to trial (if he is unable to meet bail requirements), placed in jeopardy and required to sustain the expenses of a criminal trial and, if convicted, required to be separated from his friends and family during a prolonged period of imprisonment.

The statute defining larceny does something more, however. It not only unleashes state power; it limits it. This is true because the statute is implicitly saying not only that persons guilty of the defined behavior may be punished, but also that persons whose conduct does not fall within the definition may *not* be convicted and punished for larceny. The familiar principle of "an eye for an eye, a tooth for a tooth," derived from the *lex*

talionis, illustrates a related point. However unenlightened its approach for most modern purposes, the formula limits the retaliation authorized for wrongdoing: at least an eye may not be exacted for a tooth or a life for an eye. Thus the principle of *nulla poena sine lege* (no punishment without law), which is one of the cornerstones of our penal law, regulates and contains the power of the state in its relations with individuals and groups within the community.

When one becomes aware of the vital purposes the law of crimes is called upon to serve, he might reasonably expect the drafting and enactment of criminal legislation to be widely recognized as one of the most important functions of government, and to be a subject of unusual interest and concern for legal scholars. Unfortunately, until recently the contrary has been more nearly true. Even today widespread neglect of the statutory criminal law is only beginning to be overcome in a few American jurisdictions. This is not to say that legislatures have been reluctant to enact statutes creating new crimes. All too often legislators have regarded the passing of a criminal law as the remedy for almost any social ill coming to their attention. It has been estimated that the number of crimes for which prosecutions might be brought doubled in the first half of the twentieth century. There is today hardly any human activity that is not the subject of a criminal statute in one aspect or another.

Unfortunately, however, genuine concern for the criminal law is not demonstrated by the number of criminal statutes passed. In fact, the numbers may often reveal a dangerous unconcern. Typically, the criminal "code" of an American jurisdiction consists of an assortment of statutes enacted over a long period, many in response to particular problems that have long since lost all significance. Most American legislatures (including Congress) have failed to enact a thoroughgoing revision of their criminal statutes in the present century. The consequences are serious. Much criminal legislation does not even articulate its basic provisions adequately, thereby failing to give citizens sufficient notice of conduct subject to serious penalties or to provide courts guidelines to govern the trials of criminal cases. Often indefensible incongruities are permitted to continue for decades. A few years ago, a revision committee discovered that the laws of one of the most populous American states provided larger penalties for horse theft than for stealing automobiles. In another instance the penalty for an attempt was greater than for the completed crime. Because of the helter-skelter, unsystematic growth of legislation, vitally needed provisions are sometimes completely overlooked.

One of the primary reasons the law of criminal conspiracy has been permitted to persist in its present unsatisfactory state is that its vague and amorphous doctrines can be employed to "fill in the gaps" of the criminal statutes. Although urgently needed provisions are often lacking in the "codes," the statutory criminal law is encumbered by provisions having no possible utility for modern problems. There remained on the statute books of the state mentioned above a provision making a misdemeanant of the owner of a saltpeter cave who failed to fence its entrance against wandering cattle. At the same time, no criminal statute in the state spoke to the problems of the abuse of such a common modern device as the credit card.

In 1942, Louisiana adopted a systematic revision of its law of crimes. Wisconsin followed in the 1950's and the Illinois Criminal Code appeared in 1961. These pioneering ventures preceded more recent revisions in a number of states, including New York and Texas. A major recodification of the federal criminal law has been presented for congressional action, and revision projects are going forward in several states. The more recent revisions have been inspired and guided to a considerable extent by the Model Penal Code of the American Law Institute, to which leading legal scholars, judges, lawyers and some laymen contributed in the 1950's and early 1960's. The Model Code is a major intellectual achievement; almost inevitably the form and content of criminal law revision in the next quarter-century will be strongly in-

fluenced by it. Nevertheless, criminal legislation in most American jurisdictions remains unprincipled and technically deficient. In those jurisdictions the statutes, themselves, are important obstacles to both efficiency and justice in the administration of the criminal law.

The pervasive deficiency, of which the failures of our criminal legislation are both a cause and a symptom, is the absence of a genuine penal policy in most American jurisdictions. We have typically provided no thoughtful or consistent answers to the question: Who is the criminal? As a result, we have failed to consider or even identify a number of fundamental issues that must be confronted if rational policy is to be created. These questions are many and difficult: What should our policy be toward those who cause disorder and even violence, but who are nevertheless motivated to achieve a more just society? Should a person who commits an act that creates an injury or violates a regulatory statute, but who does so unintentionally and without negligence, be subject to criminal liability and penalties? What should be the position of the criminal law with regard to the offender whose conduct may in some sense be the result of life-long cultural deprivation or of below-normal intellectual or emotional capacities?

Satisfactory answers to these questions do not come easily. Yet there is another area that may present even more insistent problems. Many competent observers believe that a great deal of behavior that is today regarded as criminal could more appropriately be relegated to the domain of private moral choice than to penal regulation. The *withdrawing* of penal sanctions from such conduct is seen as an overriding necessity. What is at issue here are statutes penalizing activities like gambling, sexual relations between consenting adults, the consumption and sale of alcohol, drugs and the like. The case for "de-criminalization" in these areas is a powerful one. Perhaps the real issue is not whether withdrawal of criminal sanctions is desirable, but how far and how rapidly this withdrawal should proceed.

Those arguing for "de-criminalization" point out that many persons today reject the notion that much of this behavior is seriously immoral, and that the authority of the legal order is subverted in the attempt to punish acts widely defended as proper or, at least, as tolerable. Experience with law enforcement in this field has not been reassuring. Much of the behavior condemned by these laws is conducted in private, and because (unlike such crimes as assault or theft) there are no complaining witnesses to give evidence, the enforcement problem is extraordinarily difficult. The police, therefore, are induced, on occasion, to exceed their powers. It is in cases of this kind that the constitutional rights of suspected persons are most likely to be violated. Here one most often encounters unreasonable searches and seizures, unlawful arrests, electronic eavesdropping and the dubious activities of undercover police agents and informants.

Finally, the point can be made that the large and largely futile efforts to enforce these laws divert the limited public resources of men and money from the tasks of protecting persons from the loss of life, limb and possessions. Consequently, these laws reduce rather than enhance the protection afforded by the criminal law to the most important interests of men in society. Some of the issues in this highly charged field have already been joined. We can anticipate much acrimony and emotion in future discussions. We shall all gain if at least a modicum of rationality is permitted to temper these deliberations.

THE LAW OF CRIMINAL PROCEDURE

"The history of liberty," wrote the late Mr. Justice Felix Frankfurter, "has largely been the history of the observance of procedural safeguards." Certainly some of the fiercest debates on issues of freedom and order have centered, in recent years, on decisions of the Supreme Court of the United States dealing with procedures of state and federal systems of criminal justice. The law of criminal procedure encompasses the full range of the criminal process from arrest to appeal and

extends even to certain problems involving the operations of correctional systems. Not all criminal procedure is concerned primarily with the rights of persons charged with or convicted of crime. Some provisions, for example, are intended simply to advance the effectiveness of the machinery of justice.

Nevertheless, the popular identification of the rights of persons with the law of criminal procedure is essentially sound. The United States Constitution contains a few provisions directed to the substantive criminal law; the constitutional definition of the crime of treason provides one example. Most of the provisions dealing with criminal justice, however, speak to procedural requirements and safeguards: trial by jury, rights of counsel, speedy trial, the privilege against self-incrimination and many more.

Because of the obvious concern of the framers of the Constitution for the criminal process and its possible abuse, it may be surprising to discover that most of the constitutional law of criminal procedure was announced less than 40 years ago; some of it, of course, has appeared only in the last decade. Perhaps the primary reason for this is that the provisions in the original Bill of Rights were assumed to be restrictions only on the federal government, not on state systems of justice. Such limitations as were imposed on the states derived primarily from the due process and equal protection clauses of the Fourteenth Amendment. For the first half of the Amendment's life, the Supreme Court interpreted those clauses very narrowly in criminal cases, with the result that the states proceeded with their administration of criminal justice almost totally free from interference by federal judicial power.

The modern era may be said to begin with the decision in the very famous case of *Powell v. Alabama* (287 U.S. 45) in 1932, which grew out of the prosecution of the "Scottsboro Boys" in the early years of the great depression. For the first time the Supreme Court reversed a state conviction on the ground that rights of counsel implicit in the concept of a fair trial had been denied the defendants and that such rights were protected against state action by the due process clause of the Fourteenth Amendment. Although the holding of the Court in the *Powell* case was narrowly stated, it marked the beginning of one of the most rapid and remarkable developments of constitutional doctrine in the history of the Supreme Court.

It may be interesting to ask why these developments began in the early 1930's. No single answer suffices, and it is doubtful that any combination of answers is fully adequate. The country was nearing the end of the prohibition experiment, and had become acutely conscious of both the problems of crime and the abuses of law enforcement that were associated with that period. Technical changes in the nature of the Court's appellate jurisdiction may have emboldened it to experiment with federal judicial supervision of state criminal justice. Perhaps most important of all, however, was the concern engendered by the loss of liberty and the abuses of governmental power in the criminal process then becoming apparent in the emerging totalitarian regimes of Western Europe. It is interesting to note that 1932, the year of the *Powell* decision, was also the year that Hitler came to power in Germany.

REMARKABLE RULINGS

Whatever the causes, a series of remarkable holdings followed during the next four decades.* Although the development was by no means wholly consistent, it generally had the effect of significantly expanding the rights of individuals caught up in the criminal process. A wide variety of problems was canvassed. A series of cases from state courts involving the "coerced confession" was initiated by the decision in *Brown v. Mississippi* (297 U.S. 278, 1936). The law of rights of counsel pursued its tortuous course. There were cases involving search and seizure, wiretapping and electronic eavesdropping, extradition, the constitutional requirements of public trial and trial by jury, and many more. There were also cases of great complexity dealing with questions of how and when the criminal defendant

* *Editor's note:* For a more detailed treatment of this subject, see *Current History*, July, 1971.

or prisoner might assert the new constitutional rights being given recognition.

Striking as were these developments in the first three decades following *Powell,* the Warren Court brought this history to a climax in the 1960's. A series of decisions of great importance and potential impact were handed down.

It is not possible within the confines of this survey to identify and discuss the difficult legal issues these cases present.** Perhaps an attempt should be made, however, to discover some of the general ideas that underlie many of the modern Court's positions in the area of criminal procedure. One of the most striking concerns of the Court, as it approached cases arising from the criminal process, relates to the adverse effects of poverty and racial discrimination on the administration of criminal justice. The poor man, in fact, suffers substantial disadvantages. He may be unable to hire a lawyer. He may be deprived of his liberty in the critical period prior to trial because of his inability to meet the financial requirements for release on bail. His resources may be inadequate to fund an adequate defense: pretrial investigation to locate witnesses in his behalf may be beyond his means, and he may lack funds to pay for the services of experts in psychiatry, handwriting, or accountancy.

These financial incapacities may place a defendant in great peril of conviction or of more severe penalties for reasons unrelated to his culpability. The reaction of the Court to these problems has been to express concern, not only about possible unfairness caused by the poverty of the accused, but for the unequal impact of the system of criminal justice on the man of little means when compared to the man of wealth. The egalitarianism of the modern Court has been noted in many areas of its adjudication, and this tendency can be seen clearly in many of its opinions in criminal cases.

A second important thread in these decisions is the Court's commitment to the adversary system of justice and its impulse to extend the adversary principle into areas where it has not generally prevailed before. By the "adversary system" of criminal justice is meant one in which accusations are made by the state (which bears the burden of proof) and in which the accused enjoys not only a presumption of innocence, but full and fair opportunities to contest the charges and evidence against him by every legitimate means. The right to counsel is almost a corollary of the adversary system, for an untrained and unaided defendant is unable to contest the prosecution on an equal footing. The Court moved, first, to bring the criminal trial closer to the adversary ideal by insisting that the states provide counsel for indigent defendants in trials of serious criminal charges. Subsequently the Court, noting that the ideal of adversary justice was not even approximated in the private, pretrial interrogation of suspects by the police or prosecutors, sought to reconstruct the character of pretrial proceedings by imposing a right of access to counsel and, where necessary, of appointment of counsel for indigent persons subjected to interrogation by the state prior to trial. In other cases, the Court has attempted to impose the image of adversary justice on the juvenile court, in "line-up" procedures conducted to secure identification of suspected persons, and elsewhere.

The commitment of the Court to the adversary model of criminal justice no doubt reflects its conviction that this course is required to give full protection to the basic rights of individuals suspected of or charged with crime. But there may be other reasons. The American institutions of criminal justice are fragmented and decentralized to a remarkable degree. It is said that in Cook

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** See *ibid.*

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"Of 40,000 federal, state and local law enforcement agencies in the United States, 39,750 are local. . . . Obviously, throughout its history, the United States has continued to adhere to the old Anglo-Saxon tradition which relied heavily on local, community organization in law enforcement matters."

Development of Local and State Law Enforcement

By Virgil W. Peterson
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The development of local and state law enforcement in this country has followed a long, slow and tortuous path—a path that leads back to early English history.

The Saxons brought to England a tribal system of justice which relied heavily on community organization. People were divided into groups of families in tens, called "tythings," headed by a "tything man," and into larger groups, each of ten tythings, under a "hundred-man" who was responsible to the "shire-reeve" (sheriff) of the county. Thus each person was accountable to his group for observing the laws, and the group, in turn, was responsible for the individual's law-abiding behavior.

Following the Norman conquest in 1066, the Anglo-Saxon shires and hundreds were continued for the purpose of local administration and for local justice under the sheriffs, who were subject to removal by the king. The communities were held responsible for maintaining order, and the sheriff was an essential link between them and the central government. Eventually, the tithing man became the parish constable and gradually many of the functions of the sheriff were transferred to the Knights of the Shire who, in time, became justices of the peace. The constable, as representative of the people of the parish, was responsible to the justice of the peace.

In each parish, an unarmed, able-bodied citizen was appointed or elected to serve as constable without pay for one year. In the towns, the responsibility for law and order was vested not only in the constable and the citizens generally, but in the guilds and other groups who supplied bodies of men known as "The Watch" to guard the gates and patrol the streets at night.

Citizens increasingly objected to performing the somewhat onerous and dangerous duties required of a constable. Eventually, the right to appoint paid deputies to serve in their stead was granted. The deputy constables developed into a professional class who sold their services to one citizen after another. Often they worked in league with the lawless elements. Corruption was prevalent. And the night watchmen appointed to patrol the streets were frequently feeble elderly men unfit for other work.

THE AMERICAN COLONIES

It was the sheriff-constable-watchman system that the colonists transplanted to American shores following their settlement early in the seventeenth century. From this base there evolved the 40,000 separate and inde-

pendent police forces in the United States today.[1]

Forerunners of present day police forces in this country were parish constables and night watchmen appointed by the colonists to patrol the streets of towns at night and to cry out the time and give the state of the weather.

THE NIGHT WATCH

In 1636, a night watch was established in Boston and before long almost every settlement in New England had at least a few watchmen. Even in the Dutch town of New Amsterdam, later New York City, an ordinance was passed on April 29, 1654, providing for the establishment of a "rattle-watch" of from four to six men to guard the city at night. Because of a lack of response on the part of the residents, the watch was not placed into actual operation until October, 1658.[2] After English rule was established, the Dongan charter of 1686 provided for a high constable, sub-constables and watchmen. Exercising supervision over the watchmen were the constables elected from the various wards. In Philadelphia, a night watchman was appointed by the provincial council in 1700 and a system was initiated which required all citizens to take turns in performing watch duties. In Boston, following a petition to the general court in 1762, an act was passed which gave the selectmen the right to choose a number of inhabitants, not to exceed 30, to serve as watchmen. This provision, later reenacted, remained in force until Boston became a city in 1822.[3]

In the early 1800's, it became increasingly apparent that the night watch was inadequate to meet the needs of the time. The ranks of the professional watchmen were comprised largely of men who were employed at other jobs during the day time. Their selection was based on political considerations. The watch was organized by wards and districts, each operating independently of the other. In New York City, the watch service extended from 9 P.M. to sunrise and some watch captains interpreted sunrise at 3 A.M. while others insisted it was 5 A.M.

In Philadelphia, the will of Stephen Girard bequeathed a large sum of money to finance a competent police force for the city. As a result, an ordinance, passed in 1833, provided for a force of 24 policemen to serve in the day as well as 120 watchmen to serve at night. The control of the force was centralized in one officer, a captain, and eliminated the chaos which had stemmed from the district autonomy prevailing up to that time. However, only two years later, this ordinance was repealed and the city returned to the old system of district independence.

In 1838, Boston adopted a plan of forming a day force of six watchmen. Within eight years this force had grown to thirty. There was no connection, however, between the day force and the night watch of 150 men. In 1842, Cincinnati created a day watch of two men selected by the council. Eight years later the council provided for the election by popular vote of six day watchmen for each of the city's wards. In 1844, the day watch in New York City was comprised of 16 officers appointed by the mayor in addition to 108 for Sunday duty. The night watch, consisting of 1,100 watchmen, was completely separate from the day force. A third force in New York City was made up of 100 "mayor's marshals" who, with 34 constables of whom two were elected from each ward, served as general peace officers.[4]

In city after city, friction existed between two independent police forces—one for day

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[1] Charles Reith, *A Short History of The British Police* (London: Oxford University Press, 1948), pp. 1–9. The parish-constable system was in the process of deterioration in England at the time the colonists were settling America. With the advent of the Industrial Revolution and the social problems it created, the law enforcement machinery in London broke down completely. Lawlessness overwhelmed the populace. A new police system for England originated in 1829 with the passage of Sir Robert Peel's "Bill for Improving the Police in and near the Metropolis." Under the British system, the various police forces have been given unity through the influence of the Home Secretary, although the local governments have never relinquished control over their police forces.

[2] A. E. Costello, *Our Police Protectors,* 2nd edition (New York: 1885), p. 10.

[3] Raymond B. Fosdick, *American Police Systems* (New York: The Century Co., 1920), pp. 59, 60.

[4] *Ibid.,* pp. 62–65.

and the other for night. It was an impossible arrangement, totally incapable of coping with increasing lawlessness in the cities. In 1844, the New York legislature passed an act which created a unified "day and night" force of 800 men for New York City and abolished the watch system altogether. Supervision of the force was vested in a chief of police, to be appointed by the mayor with the consent of the council. Opposition to the act by local officials resulted in much bickering and confusion for five months but on May 23, 1845, an ordinance was passed by the city fathers making the act effective. This action in New York formed the basis for modern police organization in the United States. Police forces under a single head were created in Chicago in 1851, in New Orleans and Cincinnati in 1852, in Baltimore and Newark in 1857 and in Providence in 1864. In Boston, the night watch which had been in existence over 200 years was consolidated with the day force in 1854 and a department of 250 men was created under the control of a chief of police to be appointed by the mayor.[5]

PARTISAN POLITICS

The movement to consolidate day and night police forces under a single head, known as a chief or marshal, was a highly significant step in the development of police organization in American cities. But the road ahead to create efficient municipal police departments was long and rocky. And a principal stumbling block was partisan politics.

Under the New York law of 1844, policemen as well as their superior officers were appointed for one year only following nomination to their posts by aldermen and assistant aldermen of the wards to which they belonged. The chief of police was largely a figurehead with little, if any, authority over his force, a situation that has prevailed in many cities until modern times.[6] It was a common practice for political parties in power to use their police forces to control elections.

During the 1850's it was not uncommon for cities to provide for the popular election of the police department chief or marshal. This was true in Philadelphia, San Francisco, Chicago and Cleveland. In Brooklyn, the people not only elected the chief of police but the captains as well.[7]

It is not surprising that the heads of police departments were unable to maintain necessary discipline. Officers commonly defied departmental regulations and occasionally assaulted their superiors.[8] For a long time there was great resistance to wearing uniforms. By 1855, a few communties required regulation hats and caps but no city at that time had a completely uniformed force. And when the New York City police required uniforms in 1856, each ward decided on its own style.[8]

Following the movement to consolidate day and night police forces, the departments of most cities were controlled by city councils for the greater part of a decade. In 1850, the administrative control of the Philadelphia department was vested in a police board consisting of the marshal and the presidents of town boards of communities within the police district. In 1853, New York City created an administrative body called the Board of Police Commissioners comprised of the mayor, recorder and city judge. For the next 48 years, the New York City department was in the hands of some form of police board.

Following the example of Philadelphia and New York City, other municipalities that created administrative boards with control over their police departments were New Orleans, in 1853, Cincinnati and San Francisco, in 1859, Detroit, St. Louis and Kansas City, in 1861, Buffalo and Cleveland, in 1866. In the decade beginning in 1870, almost all important cities experimented with some kind of police board.[9]

Police departments were generally ineffi-

[5] *Ibid.*, pp. 66, 67.

[6] See *Night Stick, the Autobiography of Lewis J. Valentine, Former Police Commissioner of New York* (New York: The Dial Press, 1947), p. 287. Valentine, a career policeman, who served with distinction as commissioner of police during the reform Fiorello LaGuardia administration, wrote that the time-honored rule is that the commissioner is "simply a king on sufferance. . . . With the exception of a few commissioners—thanks to a rare few honest city governments—the incumbents have been the playthings of rotten administrations."

[7] Raymond B. Fosdick, *op. cit.*, pp. 74, 75.

[8] *Ibid*, pp. 67–71.

[9] *Ibid.*, pp. 76–79.

cient; often corrupt. Frequently action by state legislatures to create boards to administer police departments was based on political considerations—struggles for power between state administrations controlled by one party and city administrations dominated by the other party.

By an act of the New York legislature on April 15, 1857, New York, Kings, Westchester and Richmond counties were combined into a Metropolitan Police District under the administration of a board of five commissioners appointed by the governor. The mayors of New York City and Brooklyn were ex-officio members of the board but they were subject to removal by the governor. Fernando Wood, mayor of New York City, refused to recognize the authority of the state-appointed police commissioners and on June 16, 1857, there was an open clash at city hall between members of the new Metropolitan force and the existing municipal department. Military forces were called in to quell the battle. Within a short time, the courts upheld the legality of the new Metropolitan Police District and Mayor Wood capitulated. In the interim, however, whenever a member of the Metropolitan force arrested a criminal, an officer of the municipal department would release him. And members of the two rival forces would battle each other with their clubs while the offender proceeded on his way unmolested.[10]

[10] Samuel Augustus Pleasants, *Fernando Wood of New York* (New York: Columbia University Press, 1948), pp. 77–83.

[11] Virgil W. Peterson, *Barbarians In Our Midst* (Boston: Little, Brown & Co., 1952), pp. 29, 30.

[12] Raymond B. Fosdick, *op. cit.*, p. 97. Subsequently, the power to appoint the head of the Boston Police Department was taken from the governor and vested in the mayor. Of the major police departments in the U.S. today, only Baltimore, Kansas City and St. Louis retain state-controlled systems. Beginning in 1864, a movement started to appoint bipartisan police boards whenever the board form of control had been adopted. Gradually, the whole plan of administrative control through boards was largely discarded and the bipartisan principle which was an outgrowth of the system shared the same fate. See Raymond B. Fosdick, *op. cit.*, pp. 89, 107.

[13] National Commission on Law Observance and Enforcement, *Report On Police*, No. 14 (Washington, D.C.: U.S. Government Printing Office, 1931), pp. 1, 3, 4, 43, 44, 45, 51.

The Illinois state legislature, in February, 1861, enacted a law which established state control over the Chicago Police Department through the creation of a Board of three police commissioners. The board held its first meeting on the night of March 21, 1861. Chicago's mayor, Long John Wentworth, in defiance of the new law, summoned all men on the city force to his office at 2 A.M. and discharged them. Chicago, then overrun with criminals, was left with no police protection at all for a short time.[11]

Ostensibly, the purpose of placing the management of local police departments in state-controlled boards was to eliminate the influence of politics. In general, this goal was not achieved and there was much objection to state control because it violated the principle of local autonomy—home rule. By 1915, 12 of 23 cities having a population in excess of 250,000 had experimented with state-controlled police systems. By 1920, such systems had survived in only four—Baltimore, Boston, Kansas City and St. Louis.[12]

In 1931, the Wickersham Commission concluded that the underlying causes for general police ineffectiveness were the politicians' control of the chief which resulted in his insecurity and short term in office and the political favoritism which prevailed in the selection of patrolmen and other personnel. The commission related instances where underworld elements such as gamblers, through their political alliances, had named the chiefs of police of several large cities. In others, competent chiefs of police had been removed by the same influences. In the city of Detroit there had been four police heads in the preceding year. In Chicago, there were 14 chiefs of police in 30 years and the average tenure of office for police heads in cities of 500,000 population was only a fraction over 2 years.[13] Under such conditions, the development of outstanding leadership from within the ranks and the building of sound police organizations based on careful planning were virtually impossible.

An effective police operation includes not only competent personnel working under

sound management policies but an efficient communications system and the equipment necessary to patrol the streets and pursue offenders. The Wickersham Commission reported in 1931 that based on its study, with perhaps two exceptions, not a single police force in cities above 300,000 population had "an adequate communication system and equipment essential . . . to meet the criminal on even equal terms."[14]

During the first two decades of the present century, the central siren, the telephone and call box constituted the sole means of communication between patrolmen on the street and headquarters. Some departments had a bell, a light or a horn installed on top of the call box to summon officers. A further advance in communications was the development of the teletype system. But the most important police communication system involved the radio. With the advent of the radio-equipped police car late in the 1920's there arrived a new era in police communication.

The first practical police radio installation was inaugurated in Detroit in 1928. A national study in 1931 disclosed that of cities in excess of 500,000 population, only one, Detroit, had police radio equipment and of all other cities of over 10,000 people, there were only 3 with such police installations. Of 390 cities studied, only 34 were equipped with teletype reception instruments.[15]

Today, there are few departments in cities of any size, as well as county and rural departments, that do not have police radio equipment. The development of efficient communication systems since 1930 has been phenomenal. For the year 1929, it was considered a remarkable feat that the Detroit department made 22,598 broadcasts which resulted in 1,325 arrests. In 1967, the Federal Bureau of Investigation established a National Crime Information Center in Washington, D.C., which maintains a computerized index of documented police information that is made available to all law enforcement agencies. At the end of the fiscal year 1970, the entries in the master computer totaled 2,032,150. On a single day, 63,246 transactions were handled and, at times, the hourly rate of messages from police departments located in all sections of the country exceeded 3,000.[16]

The development of a systematic plan to transmit criminal information throughout the United States had been a principal subject of discussion when the administrators of police departments held their first general conference in St. Louis in 1871. Other matters of primary concern were identification systems, criminal statistics and the formation of a permanent National Police Association which was reorganized in 1893 as the International Association of Chiefs of Police (I.A.C.P.).

A NATIONAL CLEARINGHOUSE

A national clearinghouse for criminal identification records was established by I.A.C.P. in 1896. The records consisted of photographs of known criminals and a system of anthropometric measurements devised by the French criminologist, Alphonse Bertillon, in 1882. Originally, the clearinghouse records were maintained in Chicago. After 1904, the Bertillon system was gradually replaced by fingerprints.

During the early years of the national bureau of criminal identification, it was supported by fees from less than 150 police forces and an occasional congressional appropriation of $500. This represented the first systematic attempt at cooperative activity in United States police work.

The I.A.C.P. entered into negotiations to have the federal government maintain the national identification bureau which was set up in 1924. The records of the national bureau were consolidated with those of federal prisoners maintained at Leavenworth, Kansas, and were transferred to Washington, D.C., under the jurisdiction of the F.B.I., where the fingerprint collection grew into the largest in the world.[17]

[14] *Ibid.*, p. 5.
[15] *Ibid.*, p. 88.
[16] *Chicago Tribune,* Sunday, October 11, 1970.
[17] Bruce Smith, *Police Systems In The United States* (New York: Harper & Bros., 1949), pp. 272–276.

Although the compilation of crime statistics was of concern to the National Police Association at its first meeting in 1871, over a half century passed before a successful project was launched. In 1927, the I.A.C.P. organized a Committee on Uniform Crime Records, and a system of uniform crime statistics was developed. The first returns in January, 1930, included 400 police jurisdictions located in 43 states. On July 31, 1930, the entire system of uniform crime reports was transferred by the I.A.C.P. to the F.B.I., which assumed the role as the national clearinghouse and has published regular reports since that time.[18]

Scientific crime detection laboratories were virtually unknown when police administrators first gave attention to the need for adequate crime statistics, communication and identification systems. Crime laboratories had their origin in Europe and the first well-equipped police science laboratory was established on this continent in 1929 by private interests in Chicago working through Northwestern University. After a few years, the Northwestern University laboratory was acquired by the Chicago Police Department and major police departments throughout the country began establishing laboratories with technical staffs. Since 1933, the extensive facilities of the F.B.I. laboratory in Washington, D.C., have been made available to police agencies throughout the nation.[19]

TRAINING PROGRAMS

The American police were also slow to recognize the need for training programs. It was not until 1920 that training programs became common. In 1931, the Wickersham Commission reported that the establishment of the police school was perhaps the most important change that had taken place in the police world during the preceding 35 years. Yet, at that time in cities with a population under 10,000, nothing was being done which "by any stretch of the imagination could be considered police training." In 1935, the F.B.I. established the National Police Academy. Its extensive courses are attended by officers from all parts of the nation. One of its primary goals is to train instructors attached to local and state police schools. In recent years, police training has made rapid progress. Outstanding police academies have been established in some of the major cities. Inadequate training programs are still problems in many of the smaller municipalities.

The major burden for maintaining law and order in American cities and urban centers rests with our police departments. They have developed their present status largely without plan. Their structures represent a patchwork—the addition of a division here and a service there to meet some pressing need of the time.

In consequence, the quality of police service varies from city to city—some are inept and inefficient; others will compare favorably with the finest in the world. All had their origin in the English sheriff-constable system of colonial days. And as the United States became more and more urbanized, the sheriff as well as the constable deteriorated in significance as a factor in the overall law enforcement picture in this country.

About 40 per cent of the constitutions of our 50 states give recognition to the office of constable. Legally, there are more separate and distinct police units constructed around the office of constable than any other type. Yet the law enforcement activities of the constable have largely lapsed. In some places the citizens do not bother to elect constables because no one will accept the offices. Even in rural counties in some states, such as Illinois and New York, most constables perform no police duties of any kind. In smaller villages, the fee-compensated constable has been displaced by the full-time village policeman. At the present time, the office of constable has virtually no impact insofar as law enforcement is concerned.[20]

OFFICE OF SHERIFF

In county government, the sheriff is the principal law enforcement officer. Once the Anglo-Saxon King's steward, he was deprived

[18] *Ibid.*, pp. 292, 293.
[19] *Ibid.*, pp. 279–281.
[20] *Ibid.*, pp. 90–100.

of many of his judicial powers by the Magna Carta in 1215. By the beginning of the sixteenth century, the justices of the peace had secured control of local police systems in England and thereafter the law enforcement powers of the sheriff were progressively trimmed until they virtually disappeared.

SHERIFFS AND POLITICS

The early American sheriff was a landed proprietor and his office was one of honor as well as profit. Since the United States was founded, the sheriff's office has been elective. Thus, the principal law enforcement officer of the county is directly involved in partisan politics.

The golden days of the sheriff occurred as the frontiers of America swept westward. His exploits in engaging in gunplay with outlaws and leading a posse to capture desperadoes were widely heralded and became embedded in the traditions of the Wild West.

Today, in many places the sheriff performs few, if any, law enforcement duties but confines himself to caring for the county jail and serving civil processes. In counties in which cities are located, the sheriff usually engages in law enforcement work only beyond the municipal boundaries or on rare occasions when the city police specifically request his aid.[21]

In 1931, the Wickersham Commission noted that partisan politics dictate the appointment of personnel to the sheriff's office. And with the handful of deputies to aid him, it was impossible for the sheriff to maintain any kind of adequate patrol. The commission concluded that "While there may be isolated examples of competent forces under this plan they are, at present, rare, and can hardly be expected to become the model for an extensive system."[22]

At the present time in the United States, there are 3,050 counties, each with a sheriff's office. These range in size from a one-man force in Putnam County, Georgia, to a 5,515-man force in Los Angeles. Of the 3,050 sheriff's offices, only 200 have a staff of more than 50 officers.[23]

A number of sheriff's offices have developed competent highway patrols with full law enforcement powers. And in some places there have been created county police forces that operate independently of the sheriff's office. This is true of the Nassau County Police Department in New York, which was established in 1925 and is the second largest police force in the state.

At the state level of government, the dominant law enforcement agencies are state police or highway patrols. Such organizations exist in all states except Hawaii.[24]

STATE-WIDE AGENCIES

State-wide police agencies were slow to develop in the United States. In some respects, the forerunner of present day state police forces were the Texas Rangers, organized in 1835 by the provisional government of Texas. Originally, three Ranger companies were formed under the direction of the military service to guard the borders, a function that was performed for many years. Eventually, criminal investigation became a principal activity of the Rangers, and in 1935 the Texas Department of Safety took over control of this highly publicized force.

In 1865, Massachusetts appointed a few constables with statewide powers to suppress vice. Since they were granted general police powers throughout the state, Massachusetts

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[21] *Ibid.*, pp. 75–84.

[22] National Commission on Law Observance & Enforcement, *Report on Police*, No. 14 (Washington, D.C.: U.S. Government Printing Office, 1931), p. 128.

[23] The President's Commission on Law Enforcement and Administration of Justice, *Task Force Report: The Police* (Washington, D.C.: U.S. Government Printing Office, 1967), pp. 8, 9.

[24] James Cramer, *The World's Police* (London: Cassell & Co., Ltd. 1964), pp. 414, 415. In 1834, King Kamehameha, III, organized the first police force in Hawaii which consisted of a chief and two men. In 1843 a police corps for the Hawaiian islands was organized which consisted of a captain, a sergeant, a corporal and 24 privates. In 1845, the King appointed a marshal of the Hawaiian islands to supervise and control the sheriffs of the several islands appointed by the governors. In the same year, the police were incorporated into a military system of government. In the spring of 1850, all soldiers in the police force were removed and replaced by full-time police officers. The police force eventually became a tool of political parties and in 1932 a special session of the legislature created a police commission.

may be credited with having established the first state police force. Following recurrent legislation, the Massachusetts District of Police, a state detective unit, was formed in 1879. In 1903, Connecticut formed a small state force to suppress commercialized vice. Gradually it acquired the characteristics of a state detective force.

THE ORIGINS OF THE MODERN STATE POLICE

The establishment of the Pennsylvania State Police in 1905 marked the beginning of modern state police organization in this country. Governor Pennypacker, who became the chief executive in 1903, learned that while he had the duty to enforce the state laws, he was without any instrument to carry out his responsibilities. He therefore created the state police to serve as a general executive arm for the state, to cope with disturbed conditions in the coal and iron regions which local law enforcement officers had demonstrated an incapacity to handle, and to provide police protection in the rural districts where the sheriff-constable system had broken down.

The new superintendent of the state police was responsible only to the governor. His force, a mounted and uniformed body, operated out of troop headquarters and substations and adopted a policy of providing continuous patrol throughout the rural areas. It also pioneered in the field of police training. It was the first force in the country to provide a systematic police training program for its recruits.

The Pennsylvania State Police served as a pattern for the creation of state police organizations in several states. This was true of the New York State Police which was formed in 1917. The same year the Michigan State Police was hastily organized as a war measure and it acquired permanent status in 1919. Also formed in 1919 was a state police force in West Virginia.

In 1920, Massachusetts took steps to consolidate into the Department of Public Safety all state agencies, including its detective units, that had any relationship to public safety. At the same time it established a state-wide, uniformed patrol force patterned after the Pennsylvania State Police. State police forces were also formed in New Jersey in 1921 and in Rhode Island in 1925.

In 1927, Connecticut completed a series of changes which brought its state force more nearly into line with Pennsylvania. In 1929, a state force in Maine which had been created specifically to enforce the motor vehicle laws had its powers extended to include the maintenance of general police patrols and to conduct criminal investigations throughout the state.[25]

The creation of state forces with general law enforcement powers met with substantial opposition in many places, particularly from labor unions. Today, there are state police forces in twenty-five states and state highway patrols in twenty-four. The highway patrols are largely restricted to traffic law enforcement and conducting accident prevention programs. At the beginning of 1970, the forty-nine state police and highway patrols had a total personnel of 52,812.

At every level of government, there are special purpose law enforcement agencies that are independent of the traditional local and state police forces. They add to the problems of fragmentation, frequent duplicating and overlapping agencies which characterize the law enforcement structure all over the United States.

Of 40,000 federal, state and local law enforcement agencies in the United States, 39,750 are local. And the full-time personnel of local law enforcement comprises 83 per cent of the total. Obviously, throughout its history, the United States has continued to adhere to the old Anglo-Saxon tradition which relied heavily on local, community organization in law enforcement matters.

Virgil W. Peterson, who is lecturing on organized crime at the University of Illinois, retired as executive director of the Chicago Crime Commission in January, 1970, after heading the commission staff since 1942.

[25] Bruce Smith, *op. cit.*, pp. 166–172, 296.

"The conditions placed on eligibility for . . . [federal] funds . . . may profoundly affect the character and quality of American justice," writes this specialist, who concludes that "The Attorney General . . . exercises crucial influence over the terms of public debate about law, order and justice in America."

Federal Law Enforcement in America

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The role of the United States Department of Justice in the American legal system has expanded significantly over the past decade. Under the direction of the Attorney General, it has taken on new functions and enlarged the scope of its influence. While cities and states still bear primary responsibility for law enforcement, Justice Department programs are changing the traditionally decentralized structure of justice in the United States.

Several aspects of the department's operations require scrutiny in order to understand its impact on law enforcement policy. First, how does the department affect the interpretation and application of federal law? Second, how are federal police functions organized? And, finally, what new roles has the department undertaken to perform?

Since the Attorney General has been at the center of political controversy during the past few years, it is important to emphasize at the outset that the federal government's proportion of total national resources devoted to criminal justice is relatively small. A Census Bureau survey in 1970 found that federal agencies accounted for only 11 per cent of the expenditures and employed only 8 per cent of the persons engaged in the administration of criminal justice. There are approximately 25,000 federal prisoners out of a total national prison population approaching half a million. Whether the Attorney General be a Ramsey Clark or a John Mitchell, therefore, he has direct control over only a very small part of the apparatus of national law enforcement.

THE DEPARTMENT OF JUSTICE

The Attorney General and the Deputy Attorney General share overall supervision of the Justice Department. They review decisions to initiate legal action in major cases, and they establish basic program objectives in conjunction with the White House. In the legislative process, they submit proposals for new laws and advise Congress on the wisdom of or the necessity for other suggested legislation.

In recent decades, Presidents have selected their Attorneys General from one of two sources. A newly elected President almost invariably chooses a close political associate: J. Howard McGrath, chairman of the Democratic National Committee, was Harry Truman's choice in 1949; Dwight D. Eisenhower's first Attorney General, Herbert Brownell, was an intimate campaign adviser; Robert Kennedy ran his brother's campaign; and John Mitchell directed President Richard Nixon's electoral operation. The alternative for midterm appointments has been to promote the Deputy Attorney General, who thus assures relative continuity—William P. Rogers (now Secretary of State) in 1957, Nicholas Katzenbach in 1964, and Ramsey Clark in 1967. These patterns reflect each President's desire

to have as his chief legal adviser a man whom he can trust.

THE SELECTION OF JUDGES

One crucial form of influence in the hands of the Attorney General and his Deputy is their role in the selection of federal judges. The President relies on their advice in nominating men to serve on the Federal District Courts and Courts of Appeals. The original sources of names for consideration are usually the senators of the President's party in the states where judges will serve. At the Court of Appeals level where the judicial circuits cover more than one state, there may be less reliance on partisan sources. In any case, the Justice Department regularly solicits an evaluation of prospective judges from an American Bar Association committee.

Appointments to the Supreme Court are so rare that they receive the President's personal attention, although he may still rely on the Attorney General's evaluation. Unlike President Johnson, whose choices of Abe Fortas and Thurgood Marshall were undoubtedly his own, President Nixon's unsuccessful nominations of Clement Haynsworth and G. Harrold Carswell were widely attributed to Attorney General Mitchell.

By tradition the Solicitor General, third-ranking department executive, has great autonomy in directing the department's cases before the Supreme Court. He decides carefully when to appeal if the government has lost in the lower courts; and he may even confess error, asking the Supreme Court to reverse a lower court decision in the government's favor. As litigant and as *amicus curiae* (friend of the court) in many leading cases, the Solicitor General's Office is obliged not only to promote the policy of the executive branch, but also to give the Court its own considered opinion. The Nixon administration acknowledged the political neutrality of this position when it retained in office Solicitor General Erwin Griswold, former dean of the Harvard Law School, who had been appointed by President Lyndon Johnson in 1967.

The Justice Department contains seven litigating divisions, each headed by an Assistant Attorney General and assigned specific subject matter—antitrust, civil, civil rights, criminal, internal security, land and natural resources, and tax. In addition, the Office of Legal Counsel prepares opinions for the Attorney General.

The United States attorneys in the federal judicial districts have significant, though diminishing, independence because their jobs as prosecutors require them to decide whether to bring cases to court. Appointed by the President in consultation with senators or party leaders in each state, United States attorneys are influenced by local political environments, the federal judges before whom they practice, and their own professional expertise. The divisions in Washington use their formal powers over the United States attorneys to establish general policies and rules of procedure and occasionally to supervise or take over the handling of specific cases. For example, certain civil rights, internal security and antitrust cases, among others, may not be prosecuted without approval from Washington.

Federal prosecutors have broad discretion to prosecute or not as they see fit. This discretion is most often justified on the grounds that judicial and prosecuting resources would be overwhelmed if every possible case were brought to court. As the President's Crime Commission observed in 1967:

> It is not in the interest of the community to treat all offenders as hardened criminals. . . . When there is sufficient evidence of guilt, tactical considerations and law enforcement needs may make it inadvisable to press charges. Prosecutors may, for example, drop charges in exchange for a potential defendant's cooperation in giving information or testimony against a more serious offender. They may need to conserve their resources for more serious cases.

Justice Department attorneys have another reason to decline prosecution in cases where the same act violates both state and federal law. The Supreme Court has ruled that prosecution at both levels does not violate the Constitution's ban against double jeopardy. In 1959, however, the Attorney General advised the United States attorneys:

> to make every effort to cooperate with state and local authorities to the end that the trial occur in the jurisdiction, whether it be state or federal, where the public interest is best served. If this be determined accurately . . . then consideration of a second prosecution very seldom should arise.

THE PROSECUTOR'S DISCRETION

The opposite side of discretion is the prosecutor's power to proceed on questionable evidence and to bring a defendant to trial even if he has doubts about whether the case will stand up in court. In other situations, the primary motive for prosecution may not relate to the seriousness of the offense, but rather to the prosecutor's desire to "get" the defendant for a different purpose.

Attorney General Robert Jackson once called this

> the most dangerous power of the prosecutor: that he will pick people that he thinks he should get, rather than pick cases that need to be prosecuted. . . . In such cases, it is not a question of discovering the commission of a crime and then looking for the man who has committed it, it is a question of picking the man and then searching the law books, or putting investigators to work, to pin some offense on him. It is in this realm—in which the prosecutor picks some person he dislikes or desires to embarrass, or selects some group of unpopular persons and then looks for an offense, that the greatest danger of abuse of prosecuting power lies.

Jackson believed that law enforcement agencies, as nearly as possible, should have a detached and impartial view of all groups in the community.

A number of recent controversial federal conspiracy prosecutions have been criticized for going beyond the normal bounds of the prosecutor's discretion. The conviction of Dr. Benjamin Spock for conspiring to counsel draft law violations was thrown out on appeal on grounds of insufficient evidence. In the case against eight persons involved in demonstrations at the 1968 Democratic convention in Chicago, the jury acquitted the defendants on the charge of conspiracy to cross state lines with intent to incite rioting. (Five defendants were convicted of non-conspiracy violations.) A federal riot conspiracy case was brought against the leaders of the Weatherman group's violent outburst in Chicago in 1969 after comprehensive charges had already been filed in state court. Assistant Attorney General Will Wilson, head of the Criminal Division, publicly endorsed a "head-hunting" strategy to disable violence-prone radical groups. While this method may be appropriate in dealing with organized crime, it risks creating an image of repression, whether justified or not, when applied to political dissidents.

Another major issue in department policy-making arises from the variety of legal means that can be used to achieve a given objective. Criminal sanctions are only one of many options. Civil proceedings, especially suits for injunctions and other court orders, directly compel persons or organizations to abandon an illegal course of action. They avoid the stigma of a criminal conviction and seldom require a jury trial. In the enforcement of civil rights, for instance, the department has relied almost entirely on non-criminal sanctions. The same is true for antitrust enforcement. Department executives may decide between criminal and non-criminal means when they request new legislation from Congress or when they choose from among existing statutes.

These questions about prosecutor's discretion and the choice of legal means are typical of the variety of issues that have confronted the department for years. Other problems include the peculiarities of specific areas of the law, the effective administration of a large bureaucracy, and the continuing relations between the executive branch and Congress. No Attorney General has the skills necessary for all his roles. Each relies heavily on his subordinates and their staffs to develop viable, if not creative, policies for federal justice.

FEDERAL POLICE FUNCTIONS

While the Justice Department centralizes the government's prosecutions, federal police functions are divided among a number of separate agencies, some within and others outside the department. Although the Federal Bureau of Investigation has the

widest scope for investigating federal crimes, it is supplemented within the department by the Bureau of Narcotics and Dangerous Drugs and the Immigration and Naturalization Service. The Internal Revenue Service contains divisions to investigate federal income tax violations and federal firearms, alcohol, and tobacco tax and registration offenses. The Secret Service not only protects the President, but also investigates counterfeiting and forgery. Still other investigations of specific federal crimes are conducted by the Post Office, the Labor Department, and the military services. Many federal agencies performing regulatory functions, like the Securities and Exchange Commission and the Selective Service System, may back up enforcement of their rules with criminal sanctions. Although it fragments law enforcement responsibility, this dispersion of investigative tasks is one barrier to the development of a single national police force.

In recent years the Justice Department has tried to coordinate more effectively the work of some of these agencies. To aid in the fight against organized crime, the idea of a "strike force" was conceived in 1967. A "strike force" for a particular city or region brings together representatives of various federal investigative agencies to analyze intelligence data about the operations of organized crime in the target area and to devise strategy and tactics. Local and state law enforcement officials may also participate in the "strike force."

Other forms of coordination make it possible for local, state and federal police agencies to pool information for investigative purposes. The F.B.I.'s National Crime Information Center provides police with data on wanted persons and stolen items. Project SEARCH, inaugurated in 1970, uses a computer and teletype facilities to exchange individual criminal history records among states and localities. On the recommendation of its Privacy and Security Committee, Project SEARCH has declined to include criminal history records which do not contain information about the disposition of arrests. Nevertheless, the F.B.I. continues to collect and distribute arrest records of persons who are not convicted following their arrests. If the charges against an individual are later dropped or if he is acquitted, there is no way as yet for him to have his F.B.I. arrest record destroyed or its circulation to police and personnel offices of banks and insurance companies curtailed.

Unlike state and local police, the F.B.I. seldom makes an arrest without prior approval by a federal prosecuting attorney who reviews the facts before authorizing the arrest. The F.B.I. has broad authority to begin investigations on its own initiative; but there are certain offenses where special considerations require prior approval of an investigation by one of the Justice Department's divisions. Such matters may include newly enacted statutes and subjects of unusual importance to the government and the public. In some civil rights cases, for example, a distinction is made between preliminary investigations which the F.B.I. may conduct on its own, and full or complete investigations requiring clearance by the Assistant Attorney General in charge of the Civil Rights Division. Special investigative techniques such as wiretapping and electronic eavesdropping must be approved by the Attorney General in every case.

Domestic intelligence gathering, as distinct from investigation of specific criminal violations, serves a variety of purposes. As the primary domestic intelligence agency, the F.B.I. secures data to protect national security, combat organized crime and control domestic violence. While criminal investigations may contribute to the F.B.I.'s intelligence efforts, it collects materials and undertakes surveillance even if it expects no specific prosecution. The most controversial intelligence gathering methods are the development of undercover informants (never F.B.I. agents themselves) and the use of electronic surveillance. The F.B.I. may share data with local police intelligence units and other members of the national intelligence community—the military intelligence divisions, the State Department, the Central Intelligence Agency, and the Secret Service.

To supplement the F.B.I's role in coordinating intelligence, the Justice Department set up an Interdivisional Information Unit in 1968, when urban riots and antiwar demonstrations were reaching a peak. Equipped with elaborate computer facilities, the unit consolidates data from all intelligence sources in order to anticipate possible civil disorders.

POLITICAL SURVEILLANCE

The political surveillance activities of the F.B.I. and Army intelligence have recently been the subject of hearings before the Senate Constitutional Rights Subcommittee, chaired by Democratic Senator Sam J. Ervin of North Carolina. Justice Department officials testified that there might be "isolated examples of abuse of this investigative function," but they contended that "self-discipline on the part of the Executive branch will provide an answer to virtually all the legitimate complaints against excesses of information gathering." Other witnesses testified to the need for clear legislative guidelines for political surveillance.

Christopher H. Pyle, a former Army intelligence captain who first revealed the extent of Army surveillance, told the subcommittee that:

> National and local members of the domestic intelligence community are no longer fragmented by narrow conceptions of jurisdiction, limited resources, or the boundaries of federalism. Computer and teletype technology has brought them together into a variety of regional and national galaxies, and it has made the political files of one the potential resources of others. Before we allow this process to go much further, we would do well to remind ourselves that a country may be able to survive the centralization of domestic intelligence without becoming authoritarian, but it almost certainly cannot become authoritarian without centralized domestic intelligence.

There has been other recent criticism of F.B.I. operations. Local police sometimes feel the F.B.I. is too reluctant to share investigative results, even in bombing cases; and other federal agencies have found the Bureau unwilling at times to participate in joint activities. F.B.I. Director J. Edgar Hoover has appeared oversensitive to criticism, especially when agents enrolled in college law enforcement classes have been ordered to withdraw after their professors made critical remarks about the F.B.I. His admitted inability to work closely with Attorney General Robert Kennedy in the early 1960's and his later attacks on his former superior, Attorney General Ramsey Clark, have raised questions about his objectivity in what ought to be a non-political position. Several proposals have been made to set a fixed term for the directorship, although they stand little chance of adoption while Hoover, who has headed the F.B.I. since 1924, remains in office.

The scope of federal investigations is difficult to define for any particular cases. It may combine interviews with potential witnesses and suspects, examination of documents, and cover surveillance. Short of arrest and trial, these actions may escape judicial scrutiny. As Attorney General Robert Jackson once observed, a prosecutor "can have a citizen investigated and . . . he can have this done to the tune of public statements and veiled or unveiled intimidations. Or the prosecutor may choose a more subtle course and simply have a citizen's friends interviewed." Responsible exercise of these powers depends in large measure on the commitment of department executives and F.B.I. officials to neutral, objective law enforcement and on their rejection of partisan political or self-interest considerations.

EXPANDED FUNCTIONS

The Justice Department, as noted earlier, has significantly expanded its operations over the past ten years. It has taken on additional functions and created new agencies to meet rising demands for federal action to combat crime and improve the quality of justice.

As early as 1961, the independent Civil Rights Commission proposed federal financial assistance to local police for the purpose of improving the effectiveness of law enforcement and reducing police violations of civil liberties. Attorney General Robert Kennedy's initial step, however, was the appointment of

a committee to study the quality of justice in federal courts. Its recommendations led to new laws improving the legal services available to federal defendants and revising the federal bail system.

In 1964, Robert Kennedy created an Office of Criminal Justice to coordinate nation-wide reform efforts and lay the groundwork for a national crime commission. After Kennedy left office, his successor, Nicholas Katzenbach, won President Johnson's approval for establishing a Presidential Commission on Law Enforcement and Administration of Justice, in 1965. At the same time, Katzenbach proposed, and Congress adopted, the first legislation providing federal grants to law enforcement agencies. Although modestly financed, the Law Enforcement Assistance Act of 1965 paved the way for more substantial future aid. Both the Crime Commission and the Act of 1965 were also, in part, a response to the fact that Republican candidate Barry Goldwater had made "law and order" a national political issue in the 1964 campaign.

To help reduce racial tensions that were erupting into civil disorders, the Community Relations Service (created by the 1964 Civil Rights Act) was shifted from the Commerce Department to Justice in 1966. Its representatives in many large cities began working behind the scenes to improve contacts between black groups and government agencies in such fields as employment, housing and education. One of its major goals was to improve police-community relations by meeting with local law enforcement officials.

The Omnibus Crime Control and Safe Streets Act of 1968 culminated the Justice Department's drive for wider federal assistance to criminal justice agencies. Carrying out recommendations of the President's Crime Commission, Congress established the Law Enforcement Assistance Administration in the department to perform three functions. First, it provides bloc-grants to support state and local efforts to improve the capability and performance of their law enforcement agencies, courts and prisons. Second, it operates a National Institute of Law Enforcement and Criminal Justice to engage in research projects, collects and disseminates technological information, and serves as a center for criminal justice statistics. Finally, LEAA administers an academic assistance program offering loans and grants to students taking college and graduate courses in law enforcement and related fields.

Congressional debate over LEAA focused on whether bloc-grants should go primarily to cities or should be channeled through state agencies. The 1968 Act emphasized state-wide planning, although some direct aid still goes to specific local programs. This controversy continues, since the Nixon administration has proposed unrestricted state grants. Many congressmen fear, however, that funds may be wasted without some degree of LEAA supervision.

The 1968 Crime Control Act included another provision, opposed by the Johnson administration, for wiretapping and electronic eavesdropping. Since President Johnson favored electronic surveillance only for national security purposes related to foreign intelligence, he refused to allow federal agencies to use wiretaps or bugging devices for any other purpose. President Nixon reversed this policy in 1969, and Attorney General Mitchell authorized full use of electronic surveillance by court order in major criminal investigations and without court order against domestic groups deemed a danger to national security. LEAA also began encouraging states and cities to take advantage of their new opportunity to engage in electronic surveillance as a weapon against organized crime.

Under the Nixon administration, the trend toward greater involvement in local criminal

(Continued on page 368)

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"It is important to recognize that while decisions of the United States Supreme Court receive the most publicity and that Court seems to be the most important judicial institution in the United States, state and local courts deal with those cases, problems and issues that most often affect basic aspects of daily life in the United States."

The System of State and Local Courts

By Henry Robert Glick
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The structure of state and local courts in the United States reflects numerous influences. State courts have changed as new social, economic and political demands have required new courts with new functions to meet problems which simply did not exist earlier. However, while change has occurred, state traditions also have been important in preserving certain features of the old court systems, so that many states have new as well as old courts. The origin of some courts can be traced to the colonial period and to English judicial traditions. Unlike the federal court system, which blankets the entire United States, state court systems vary greatly across state lines. Certain types of courts found in one state do not exist elsewhere, and courts with different names may perform similar functions depending upon their jurisdiction, which is determined by state constitutions and state legislatures. As a result, it is frequently difficult to grasp the similarities and differences in state court systems.

STATE COURTS TODAY

Despite differences among state court systems, they share certain basic organizational characteristics. Today, all 50 states have three general tiers of courts: (1) *state appellate courts* (including appellate courts of last resort, usually called state supreme courts, and intermediate appellate courts, found in only 23 states), whose main function is to review the decisions of lower courts; (2) *state trial courts of general jurisdiction,* which are the trial courts with the broadest range of authority in holding trials; and (3) *trial courts of limited jurisdiction,* including a variety of highly specialized courts which hear cases only in limited categories (e.g., traffic courts, divorce courts, small claims courts, probate courts and so on).

Although the basic structure of state court systems is very similar, the specific number, names and functions of state courts vary widely. The most important differences are found in the presence or absence of intermediate appellate courts and the great variations in the number and types of trial courts of limited jurisdiction. The states are similar in that most of them have only one or two types of trial courts of limited jurisdiction. Variations in the complexity of court systems are apparent in the contrast between the courts of California and Florida. (For the courts in each system see Table I.)

Both court systems are similar in having supreme as well as intermediate appellate courts; however, the Florida court system is much more complex than that of California because it has two trial courts of general jurisdiction and many more trial courts of limited jurisdiction. Other state

Table I: State Court Variations

California	*Florida*
—Appellate Courts—	
Supreme Court	Supreme Court
District Courts of Appeals	District Courts of Appeals
—Trial Courts of General Jurisdiction—	
Superior Courts	Circuit Courts
	Court of Record (Escambia County Only)
—Trial Courts of Limited Jurisdiction—	
Municipal Courts	Civil Court of Record
Justice Courts	Criminal Courts of Record
	Civil and Criminal Court of Record
	Courts of Record
	County Judges' Courts
	Juvenile and Domestic Relations Courts
	Small Claims Courts
	Justice Courts
	Municipal Courts
	Metropolitan Court

court systems vary in complexity in similar ways.

THE DEVELOPMENT OF STATE COURT SYSTEMS

Colonial Courts: State courts have evolved from rather simple institutions in the colonial and early post-revolutionary period to very complex, highly specialized court systems. In the colonial period most political power was centralized in the colonial governor and his immediate advisers. With few exceptions, the governor performed executive and legislative as well as judicial functions. Certain minor officials were appointed by the governor to aid in the management of judicial duties, but they exercised little power independent of the governor.

In the early period of colonial rule, the tasks of governing were relatively simple and routine. People were gathered in small settlements so that at that time there was less need for extensive formal political institutions than there was later, when the population had increased and social and economic relations became more complex. As the population increased, new courts were created to provide local services to settle an increasing number of conflicts. These few new courts were organized on the town and county levels so that litigants would not have to travel great distances to have their cases argued before a court.[1] Appeals from all courts usually could be taken to the governor and the colonial assembly and also to the courts of England, but this occurred only rarely; in most instances, the governor and the assembly had final judicial authority.

The judicial and legal systems in each colony developed differently, depending upon local beliefs and customs. The English legal tradition and English court structures generally were adopted, but they were soon modified to suit the requirements of local conditions. Religious practices and customs as well as the commercial development of the individual colonies resulted in different legal rulings and court organization.[2] In certain respects, these early variations among the colonies have persisted and contribute to the great variety of court systems today.

The structure of colonial courts and the

[1] See, for example, David Mars and Fred Kort, *Administration of Justice in Connecticut*, ed., I. Ridgeway Davis (Storrs, Connecticut: Institute of Public Service, University of Connecticut, 1963), pp. 20–21.

[2] Francis R. Aumann, *The Changing American Legal System* (Columbus, Ohio: Ohio State University, 1940), pp. 6 and 10.

development of law were also affected by the general absence of legal experts. The lack of well-trained lawyers reflected the low status of law and the courts in the early colonial period and was also a factor in maintaining the non-professional image of the judiciary. Few lawyers emigrated to the colonies[3] and, moreover, court procedures and the law in England were distrusted by the colonists, many of whom had come to America specifically to escape legal action. Therefore, they were not sympathetic to the development of a professional class of lawyers in America. Wealthy landowners and merchants also opposed the development of a professional bar because they feared competition for the general social, economic and political control which they exercised over colonial society.[4] Not until the 1800's did the practice of law develop into a major and respected profession in the United States.

As a result, early American courts were staffed on a part-time basis by laymen with little or no legal training.[5] The judges were usually merchants, planters and wealthy landowners, who gave part of their time to settling local disputes. In terms of political control, judicial power coincided with the influence which business and other financial interests had on life in the colonies.

Despite the absence of trained personnel and the unpopularity of law and the judiciary, new courts continued to be added to the judicial system in response to increasing and varying demands. As the population grew and the economy expanded, litigation increased and more courts were required to dispose of the cases. For example, as early as 1685, the General Court of Massachusetts, which performed legislative functions as well as trial and appellate court duties, was so overburdened with cases that magistrates of each of the county courts were permitted to act as judges in certain cases formerly decided by the General Court.[6] In 1691, a new court of chancery was created and given jurisdiction over these cases. Similarly, in 1698, Connecticut established probate courts which dealt specifically with wills and estates, a group of cases formerly heard by the county courts.[7] As new kinds of courts were added, judges and lawyers dealt with more specialized cases and gained skills and established rules and procedures that further distinguished between judicial and legislative institutions.

EARLY AMERICAN COURTS

After the Revolution, the powers of the governors were drastically reduced and, in their place, state legislatures exercised much more political influence. State courts, however, were distrusted as much as before. As indicated above, the memory of English courts created a belief among the colonies that judicial action was coercive and arbitrary. Moreover, since colonial courts usually were controlled by the governor and acted to extend his power, the colonists were not anxious to see the development of a large, independent state judiciary. As a result, the structure of the judiciary did not change very much immediately after the Revolution. Moreover, judicial decisions were scrutinized by state legislatures, and judges sometimes were removed or a particular court was abolished to counter the effect of an unpopular court decision.[8]

Distrust of the judiciary became even more prevalent when various courts declared legislative acts "unconstitutional." Unlike many English practices and institutions which were modified and adopted in the colonies, judicial review of the legislature was largely an American creation. At the time of the Revolution, it was used on occasion by the courts to justify opposition to colonial edicts. However, judicial review became most important after the Revolution and was a major source of political conflict between courts and legis-

[3] *Ibid.*, p. 8.
[4] Charles Warren, *A History of the American Bar* (Boston: Little, Brown, 1911), p. 8.
[5] Aumann, *op. cit.*, p. 35.
[6] E. H. Woodruff, "Chancery in Massachusetts," *Boston University Law Review*, Vol. 9 (1929), p. 169.
[7] Mars and Kort, *op. cit.*, p. 22.
[8] Herbert Jacob, "The Courts as Political Agencies," *Studies in Judicial Politics*, Herbert Jacob and Kenneth N. Vines ("Tulane Studies in Political Science," Vol. VIII; New Orleans: Tulane University, 1962), p. 17.

latures. Despite threats and the actual removal of judges in a few instances, the courts became more assertive and declared legislative acts unconstitutional with greater frequency. These cases often involved important economic interests such as state policy governing creditor-debtor conflicts. The legislatures usually were more favorable to debtors, while the courts reflected the demands of creditors who urged a strict policy in the collection of debts. In several instances, state courts declared unconstitutional legislative acts favoring freer money.[9]

These early political conflicts between state courts and legislatures were significant for court organization, for they were an early indication of the eventual development of an autonomous judicial system. Although certain state legislatures continued to act also as appellate courts for many years,[10] state courts were beginning to establish the basis of independent judicial authority. Also, as we have indicated, courts and law became more specialized as the population and the economy of the states increased and became more complex. This also contributed to the emergence of state courts as independent political institutions.

COURTS IN A MODERNIZING SOCIETY

The structure of state courts, caseloads and decisions began to change in important ways in the middle and late 1800's. This was the period of industrialization in the United States, which not only brought about changes in business and economic relations but also changes which affected the fundamental character of American life. Labor unions were formed in increasing numbers; new immigrants from eastern and southern Europe began to arrive in the cities of the northeast; and the trend toward modern urban society began. These changes created pressures which never had been felt before: the life styles of a largely rural United States were beginning to be replaced by new social structures, new attitudes, new expectations and entirely new problems in an industrial United States.

The courts were affected in important ways. Industrial technology, such as the development of steam power and the growth of railroads, shipping and commerce, was the source of economic conflicts that had not existed in simpler times. New kinds of court suits over rates charged, liability for personal injury to passengers and damage to the property of shippers, as well as questions concerning the basic structure of corporations were channeled into the courts. In many instances there was no legislation dealing with such new problems and the courts had to create new rules which would govern the problems of the industrial age. Such responsibilities provided the courts with opportunities to make important and necessary additions to the political system.[11]

The industrial revolution also brought about many profound changes in the structure of local courts. Coastal cities grew in the 1800's with the expansion of commerce, and new courts were created specifically to meet the needs of the growing cities. Often, courts similar to those already existing at the county level were created especially for city litigation. These courts, however, proved inadequate for meeting the unique problems when vast population shifts to the cities began after the Civil War.

NEW SITUATIONS

The amount of litigation generated from large concentrations of people was a new pressure on the judicial system, but more important were the new situations which earlier courts, operating in a more simple, rural society, had never had to consider. The closeness of city living, the requirements of grueling industrial employment and the influx

[9] Jacob, *op. cit.*, p. 18. While Marbury v. Madison is well known as the United States Supreme Court case in which the high court proclaimed its power to review legislation, eight state courts had espoused the power of judicial review years before the famous 1803 United States Supreme Court case. See Charles Grove Haines, *The American Doctrine of Judicial Supremacy* (Berkeley: University of California Press, 1932), pp. 148–65.

[10] Legislative appellate power ended entirely in the United States in 1857 when Rhode Island transferred all appellate judicial authority to the state supreme court. See Aumann, *op. cit.*, p. 164.

[11] See, for example, Warren, *op. cit.*, pp. 475–507.

of many different social groups affected the traditional patterns of life of the new city dwellers. Adjustments to an often bewildering environment were difficult to make and family cohesion and self-sufficiency were seriously undermined. The relations between tenants and landlords and employees and employers frequently led to conflicts and court suits. Shattered family life, juvenile delinquency and higher crime rates were new problems with which the courts had to deal.

Minor conflicts between consumers and small businesses also generated much litigation. Earlier, business litigation usually had involved larger corporations, but the growth of the cities provided a setting for the establishment of many small retail businesses. Disputes between businesses and between buyers and sellers were often petty and relatively unimportant in terms of broader social or political developments, but they were important to the litigants themselves, and city courts were faced with many new demands. Finally, the widespread ownership of automobiles posed numerous problems. Traffic laws had to be created by legislatures and interpreted by the courts; accident claims and the development and application of liability law placed more demands on courts.[12]

These new demands had a major impact on the structure of state court systems. Although the number and variety of state courts had grown somewhat in the past, social and economic change occurred so rapidly toward the end of the nineteenth century that most state judicial systems could not meet and satisfy the demands made upon them. For a time, existing city courts, primarily justices of the peace, dealt with much of this new litigation, but the structure of these courts was unsuited to the new litigation. Most of the judges had little or no legal training and they lacked the ability to do more than simply process the large number of cases as best they could. Moreover, the fee system of justice courts often made it very expensive for an individual to go to court to make a claim. Typical cases included employees' claims for wages, collection of small debts and payment for sold goods. The amount of money involved in these cases was often less than fifty dollars, but the fees charged by the court to hear the case sometimes could take ten per cent and more of the amount collected—an amount that many claimants could not afford.

In response to these new and complex problems, some states began to enlarge their judicial systems by adding new courts whose jurisdiction, procedures, and personnel were designed to deal with specific parts of the new litigation. Moreover, it is important to recognize that not only did these new courts help to dispose of many cases but, more significant, they represented innovations in judicial structures and ways of coping with new social and economic pressures. One important change, for example, was the creation of small claims courts with simplified procedures and the absence of lawyers, both of which were intended to help in the collection of debts at minimal cost. Juvenile and family relations courts also were added in some cities. Besides settling litigation, these courts attempted to provide some constructive guidance to the juvenile offender and the troubled family.[13] Similarly, traffic courts were added in many cities to manage the litigation produced by increased automobile ownership.

Additions of new courts and judges to state judicial systems generally were not made according to any overall coherent plan for the state judiciary. Changes were made sporadically and haphazardly and little attention was paid to the jurisdictional boundaries of the courts and the possibility that the authority of one court might overlap with that of another. In addition, except for the power which appellate courts had to review the decisions of trial courts, each court was an independent institution. Rules of procedure and decisions themselves varied widely and judicial decision-making was highly decentralized.

In some states, efforts at judicial reform have combined numerous courts with over-

[12] James Willard Hurst, *The Growth of American Law* (Boston: Little, Brown and Company, 1960), pp. 147–69.

[13] *Ibid.*, p. 155.

lapping powers into a more streamlined court system but, as indicated above, many states still have highly complex court systems that have grown gradually over the years. Some courts have existed for centuries while others have been added in more recent times. Complexity and confusion exist in many states. For example, describing the court system of Maryland, one commentator has written:

> Maryland's court system is very complex. There are no less than 16 different types of courts, with little uniformity from one community to another. A lawyer from one county venturing into another is likely to feel almost as bewildered as if he had gone into another state with an entirely different system of courts.[14]

A similar situation exists in other states as well.

THE FUNCTIONS OF STATE AND LOCAL COURTS

It is important to recognize that while decisions of the United States Supreme Court receive the most publicity and that Court seems to be the most important judicial institution in the United States, state and local courts deal with those cases, problems and issues that most often affect basic aspects of daily life in the United States. Federal courts also deal with some of these issues, but in terms of the quantity of cases and the different types of litigation, state and local courts are much more significant parts of the American judicial system.

Included in the typical case load of state and local courts are most of the criminal cases decided in the United States. Offenses ranging from murder, rape, theft and assault, to less serious violations such as traffic violations, disturbing the peace, and trespassing all are settled in state and local courts. The federal courts have jurisdiction over cases dealing with violations of federal law, but these constitute a much smaller number of cases than all of the criminal cases decided each year in the various state courts. Other cases including conflicts over property ownership, condemnation of property for public purposes (e.g., parks, highways, public buildings), contract disputes, workmen's and unemployment compensation, disagreements about local zoning policy, divorce, adoption, wills, trusts and estates, conflicts over elections, landlord-tenant conflicts, automobile accident cases and others are channeled into state and local courts. Most citizens rarely, if ever, find themselves involved in a court case, but if they do become involved in a dispute that cannot be settled without litigation, or if they commit a crime, the chances are great that their case will be decided in one of the many state and local courts.

Besides determining the result in individual cases, decisions in such cases can have an important generalized effect on public policy, determining, for example, how stringently traffic laws are enforced, how harshly criminals are treated or how difficult or easy it is to obtain a divorce. A series of decisions in each of these subject areas sets the tone or pattern which courts follow in solving the problems presented to them in litigation.

The importance of state and local courts goes beyond this role as well. State courts also have opportunities to make important decisions that affect major governmental policy. For example, state supreme courts have made important decisions affecting state policy toward civil rights and the rights of criminal defendants, state tax policy, governmental regulation by business, apportionment of state legislatures, and election procedures.

In a single court case, the high courts of the states may declare an act of the legislature unconstitutional, or, through their written opinions, their decisions may alter the decisions of other state courts in future cases. In these ways, state and local courts are important governmental institutions helping to determine how conflicts and problems in our society are to be resolved.

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[14] *Survey of the Judicial System of Maryland* (New York: Institute of Judicial Administration, 1967), pp. 11–12.

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"Provisions of more judges, better court administration and other mechanisms promise to bring the federal courts closer to the goal of swifter justice, but the process must be one that is just as well as swift."

The Federal Courts

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There are some obvious criteria by which one can judge the efficacy of a court system in its handling of criminal cases.[1] First, it is of the highest importance that it treat alleged offenders justly, and appear to dispense as much justice as the law affords. Second, it should act with reasonable dispatch, both in the interest of safeguarding the defendant and also to satisfy the public's feeling that public dispensation of justice is being carried out in a way that accords with its high importance. Third, it should appear to be a reasonable response to the incidence of crime, and, if it cannot be viewed as a force for deterring crime in any significant degree, it should at the least not be regarded as an institution that works so capriciously and inefficiently that it may encourage the commission of criminal acts. A fourth, and less important, measurement is that of the costs of making the system operate. The danger in using this approach is that a low cost per case system may produce more frequent examples of injustice which naturally cannot be assigned a dollar value.

THE HUMAN FACTOR

In this brief examination of the federal court system, these criteria will be kept in mind, though this paper will not offer more than the most tentative assessments of the efficacy of the federal system.[2] Some of the shortcomings will be noted as will various reforms already adopted or in the process of gaining recognition. Above all, it should be remembered that we are dealing with courts staffed and operated by men for social purposes involving other men. Those who have participated in, or observed, the work of courts, especially those concerned with criminal trials, recognize the obvious fact that men do make a difference. Judges, counsel, jurors and other court personnel represent the law in action. At the appellate level, a different world prevails, but the differences in temperament, intellect and views of judges determine the way the law moves and changes in response to social needs and demands. The best devised machinery and procedures of the law cannot overcome the negative effects

[1] A critical survey of the role of courts in the administration of criminal justice is The Report of the President's Commission on Law Enforcement and Administration of Justice, *The Challenge of Crime in a Free Society* (Washington, D.C.: U.S. Government Printing Office, 1967), Chapter 5. The entire report is required reading for a serious student of this subject. It is available from the Government Printing Office, price $2.25.

[2] More detailed accounts are available in Lewis Mayers, *The American Legal System*, rev. ed. (New York: Harper and Row, 1964); Henry J. Abraham, *The Judicial Process*, 2d. ed. (New York: Oxford University Press, 1968). Though dated, a classic, highly technical analysis of the federal court system is Henry M. Hart Jr. and Herbert Wechsler, *Federal Courts and the Federal System* (Mineola, N.Y.: The Foundation Press, 1953). An excellent collection of well edited materials on every stage and aspect of criminal justice, both state and federal, is Livingston Hall, Yale Kamisar, Wayne R. LaFave, Jerold H. Israel, *Modern Criminal Procedure*, 3d. ed. (St. Paul, Minn.: West Publishing Co., 1969), with fall, 1970, supplement.

of mediocre judges or mediocre counsel.[3]

The federal courts play two roles in the administration of criminal justice in the United States. They are a self-contained system for trial and appeal of federal criminal cases—those made crimes by acts of Congress—and they exercise a supervisory role in safeguarding the constitutional rights of state criminal defendants. The burden on the federal courts is constantly increasing with respect to both roles due to the growing crime rate, the increasing number of federal crimes, and various U.S. Supreme Court decisions protecting the constitutional rights of both state and federal criminal defendants.

STRUCTURE AND FUNCTION OF FEDERAL COURTS

The Magistrates. Since 1968, in every instance the first judicial official encountered by a federal criminal defendant is a United States Magistrate, an office created in 1968 to replace that of United States Commissioner.[4] Each of the 93 federal judicial districts now has one or more full-time and several part-time magistrates, appointed by the district court, whose principal duties consist in holding a hearing promptly after a defendant's arrest and, if a felony is charged, determining if he should be detained.

In minor and petty cases, generally those in which a sentence of no more than six months can be imposed, the magistrate, with the consent of the defendant, may try the case.[5] The magistrate also has the duties of advising defendants of their rights, including the right to bail in most cases and the setting of bail. In addition, magistrates are required to assist the district judges by screening the large number of post-conviction motions made by, or on behalf of, federal prisoners. The creation of this new, more professional minor judiciary was produced, at least in part, by the strongly worded recommendation of the President's Commission Report, *The Challenge of Crime in a Free Society,* a 1967 landmark report which singled out federal and state minor judiciaries as particularly deficient.[6]

While it is much too early to assess the changes produced by this reform (magistrates are being appointed in many districts for the first time in 1971), the magistrates cannot help but prove more helpful to the district courts than their predecessors, the politically oriented federal commissioners.

District Courts. The trial courts of general jurisdiction (unlimited power to try federal crimes, as well as specified civil cases) are the 93 district courts. Each state has at least one, as does the District of Columbia, Puerto Rico, Canal Zone, Guam and the Virgin Islands. With the addition of 61 new district judgeships in 1970 a total of about 410 district judges are authorized for the federal trial bench. The number of judges constituting a district's bench varies from one to more than 24, though each judge functions singly, except for very limited categories of cases.

The district judges, like those on the court of appeals and the United States Supreme Court, are appointed for life, during good behavior, by the President, with the consent of the Senate. District judges receive an annual salary of $40,000.

The actual appointment process frequently reflects a number of political considerations that may have little relevance to the performance of judicial duties. "Senatorial courtesy" usually requires the consent of the home state Senators of the appointing party, or approval by congressional leaders, if Senators are of the opposite party. Frequently, bar leaders of the appointing party have discernible inputs.[7] The salary and prestige of office go far to insure that clearly unqualified men will not be chosen, and most frequently a capable man will be selected if the bar is of sufficient talent to allow a reasonable offering to the appointing authority. There is no formal screening device, however, such as the Missouri Plan, for seeking to ensure that only

[3] For insights into these aspects of court work, a large number of studies are available. Consult the extensive bibliography in Abraham, *supra,* n. 2.

[4] 18 U.S.C. 3060 (1968).

[5] See Rules of Procedure for the Trial of Minor Offenses Before United States Magistrates, January 27, 1971; 27 L. Ed. 2d., no. 7, i.

[6] *Supra,* n. 1, pp. 128–130.

[7] See Joel B. Grossman, *Lawyers and Judges: The Politics of Judicial Selection* (New York: John Wiley and Sons, Inc., 1965).

qualified men are chosen. Nor is there any assurance that those appointed to the federal bench will have had a background of criminal trial work.

Those attorneys who reach positions of power in local political party circles frequently are men associated with business-oriented law firms. This, of course, does not mean that they are incapable of learning the intricacies of conducting criminal trials within a reasonable time, and, given the lengthy tenure of most federal judges, deficiencies in background may seem to be a small price to pay for obtaining first-rate men. The American system of selecting trial judges does, however, furnish a sharp contrast to the British system which provides for selection of judges from the ranks of barristers, a professional group of attorneys skilled through experience in both civil and criminal trials.

The annual criminal case load of the 89 continental district courts exceeds 30,000.[8] It should be noted that federal offenses differ from those punishable under state laws insofar as most involve various statutory offenses such as fraud, interstate auto thefts, violation of immigration laws and regulatory laws of various kinds. Recently, Selective Service Act cases have been numerous. In addition, there are approximately 1,400 burglaries and robberies which occur in such a way as to give the federal authorities jurisdiction, with most arising in the District of Columbia. While state courts have jurisdiction of most crimes of violence and those involving the taking of property, the federal courts have a large proportion of cases involving "white collar" crime.

The overall caseload figures are misleading, if they are taken as representing a burden shared equally by the district courts. As of June, 1969, in 89 districts with 322 judges the average weighted caseload per judge per year was 64 criminal cases, yet in one district the annual load was 1,077 per judge while others had weighted loads of only 16 to 30 per year.[9]

This suggests one of the administrative problems of the federal courts. Districts have been established geographically to take account of political realities as well as judicial needs. While retired judges and, occasionally, even a regular judge can be moved to an overburdened district, the annual reports of the director of the administrative office of the United States courts document an irrational utilization of federal judicial manpower, perhaps the result to be expected from a system in which the judges, through the device of the annual judicial conference, supposedly provide administrative guidance and control for the federal courts, with the administrative director relegated largely to the role of collecting statistics and ordinary housekeeping chores. Even a Chief Justice interested in administration reforms, as is Chief Justice Warren E. Burger, soon finds that his exhortations to his colleagues and his ability to push legislation through Congress are hardly the equivalent of true administrative power, such as that possessed by the Chief Justice in New Jersey or Colorado.

The mechanics of processing federal criminal cases can be quickly summarized.[10] A defendant bound over by a magistrate has a right to a preliminary hearing, frequently waived, and grand jury indictment, which may also be waived. Since the proceeding before the grand jury is wholly controlled by the federal district attorney, there is a serious question of the need for retaining this institution. States which use the prosecutor's in-

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[8] Administration Office of the U.S. Courts, *Federal Offenders in the United States District Courts,* 1968, p. ix. This report contains detailed statistics on a wide variety of topics related to criminal justice, e.g., severity of sentences by districts, characteristics of offenders, and so forth.

[9] *Reports of the Proceedings of the Judicial Conference of the United States: Annual Report of the Director of the Administration Office of the United States Courts 1969,* pp. 322–24 (Washington, D.C.: U.S. Government Printing Office, 1970). These combined annual reports contain detailed information on current problems and operation of the federal courts. The figure of 1,077 is misleading because it includes a very large number of narcotics cases in southern California. A truer upper figure would be approximately 600. For a good picture of the disparities in caseload between districts, see *Hearings, Federal Courts and Judges,* Subcommittee No. 5, Committee on the Judiciary, House of Representatives on 5.952 (1969).

[10] *The Federal Rules of Criminal Procedure,* first enacted by Congress in 1946, and amended from time to time, govern the procedure in criminal cases.

formation (an affidavit stating his reasonable belief that the defendant has committed a specified crime) seem to afford equal protection against unwarranted prosecution.

Three other pretrial aspects deserve mention. One is the important reform accomplished by the Federal Bail Reform Act of 1966[11] in not only allowing but encouraging the pretrial release of many defendants without money bail, or on very low bail. This avoids the "punishment" of non-bail defendants whose cases are later dismissed, or who are acquitted after trial, and greatly assists defense counsel in preparing for trial, both in case of communication with the defendant and in locating witnesses.

Another important change initiated in 1964 was a requirement that each district court had to adopt a plan of representation for indigent defendants utilizing private attorneys or those furnished by a bar association or legal aid agency, or some combination of the two.[12] While this was an improvement over the ad hoc method of appointment previously used in district courts, it went only part way toward meeting the need to provide competent counsel, especially in the busier courts. Finally, a 1970 act provided for the creation of a system of federal defenders, analogous to the state public defender offices in operation in some of the states.[13] It should be recognized that this will hardly reduce the caseload or increase the dispatch of criminal business, but it adds greatly to the fairness of the trial.

Finally, though the rate is lower than that of state systems, due principally to the smaller number of misdemeanor cases in the federal courts, the importance of guilty pleas should not be overlooked. In 1964, pleas of guilty were entered in 79 per cent of federal cases, but by 1968, the percentage was down to 69 per cent.[14] These pleas, produced by bargaining between defense counsel and the district attorney, are indispensable to the system as it now operates, and are fair or unfair depending on the skill of the bargainers and the accuracy of their estimate of how the judge or jury will react to the case as presented at the trial. The judge's role is a modest one of placing on the record at the time the plea is received the defendant's responses showing that he comprehends the significance of his plea and submits it voluntarily, and not as the result of pressure or other improper inducement.

When the cases terminated by pleas of guilty are added to those dismissed because of the inadequacy of evidence or other reason, only about 15 per cent of over 30,000 criminal cases are left for trial either by the court (the judge) or by jury. In fiscal 1968, about twice as many of these went to jury trials (9.9 per cent against 5.2 per cent tried by the court).[15] More significant was the increase in number of jury trials, from 2,671 in 1964 to 3,139 in 1968, since jury trials inevitably take longer than trials to the court.

There are significant variations based on the type of offense in the percentage of offenders who go to trial. A larger than average number of those charged with assault and homicide, counterfeiting, Selective Service Act violations, fraud, robbery, narcotics and other national defense laws violations seek trials, and consequently absorb a disproportionate amount of court time. In all trials, juries convicted 78 per cent of those tried, while trial by the court resulted in the conviction of 71 per cent.[16] The time interval between the filing of criminal charges and disposition has increased in recent years, especially where trial is involved, rising from 1.3 months to 4.6 months for court trials and from 4.8 to 5.8 months for jury trials between 1964 and 1968.[17]

In addition to the greater availability of counsel and the reduction in the number of guilty pleas, the greater time interval between filing and trial is accounted for by an increased opportunity to test the validity of arrests, searches and seizures and incriminatory statements given by the accused. To some slight degree, the time interval has been affected by the length of some of the more

[11] 80 Stat. 214 (1966).
[12] 18 U.S.C. 3006 A.
[13] 18 U.S.C. 3006 A. as amended (1970).
[14] *Federal Offenders in the U.S. District Courts*, *supra*, n. 8, p. 7.
[15] *Ibid.*, p. 10.
[16] *Ibid.*, x.
[17] *Ibid.*, xi.

spectacular political-type trials, such as the Boston trial of Dr. Benjamin Spock and other other anti-war activists, and the notorious trial of the Chicago Seven.

One remedy for increasing workloads and greater delay is to add judges, which was done by the Judge's Bill of 1970, creating 61 new district court judgeships.[18] Another is to increase the administrative efficiency of the courts, which is the aim of a 1971 measure providing for a trained court administrator in each of the circuit courts.[19] In addition the Chief Justice of the United States has called for additional steps to speed up the disposition of all court business, such as reducing civil juries from twelve to six. A countereffect is the proclivity of Congress to create new criminal acts in each session, such as the anti-riot provision in the Civil Rights Act of 1968[20] and the Drug Abuse Prevention and Control Act of 1970.[21] And when Congress seeks to increase the law enforcement capabilities of federal authorities by authorizing wiretapping, as it did in the Omnibus Crime Control Act of 1968,[22] or to induce the testimony of recalcitrant witnesses, as in the Organized Crime Control Act of 1970,[23] the natural result is to increase the number of cases that federal prosecutors can take to court.

In spite of the seemingly contradictory evidence furnished by a few highly publicized federal trials, most observers are impressed with the "no-nonsense" atmosphere that generally characterizes federal criminal trials. The judge plays a greater role than most state systems allow. He, rather than counsel (as in state cases), conducts the questioning of jurors, thus saving a considerable amount of time. He does not hesitate to speed up the examination and cross-examination of witnesses, and frequently uses the charge to the jury as a vehicle for summarizing important elements in the case and guiding the thinking of the jury. The burden on the federal courts, then, is largely the product of a growing crime rate, additions to the list of federal crimes and, to some extent, an increase in the opportunities for effective defense, including a greater reliance on constitutional rights.

Court of Appeals. There are ten courts of appeals geographically distributed throughout the United States with an additional court for the District of Columbia, a court that accounts for approximately one-fifth of the 2,500 criminal cases appealed from the district courts to the courts of appeals in fiscal 1969.[24] In addition, there were approximately 1,200 appeals from denials of writs of habeas corpus. The population of circuits is roughly proportionate to the number of judges, with the smallest having three (first circuit) and the largest thirteen (ninth). Each judge, who is appointed by the President with the consent of the Senate and who serves during good behavior, receives a salary of $42,500.

The heavy attention given to United States Supreme Court decisions obscures the fact that the courts of appeals are the ultimate appellate courts for the bulk of federal cases even though the highest court has greatly increased its role in reviewing both state and federal criminal cases. The review function of the courts of appeals is particularly evident in the review of habeas corpus appeals brought by federal prisoners. In fiscal 1969, approximately 14 per cent of the criminal cases appealed from the district courts resulted in reversal by the courts of appeals.[25]

United States Supreme Court. At the apex of the federal system is the Supreme Court, whose principal role is the interpretation and application of the various provisions of the constitution of the United States. It is not a court of general review power and, normally, will not choose to exercise its essentially discretionary power to review state and federal criminal cases unless there is a significant issue or issues arising under the constitution, laws or treaties of the United States.

The nine members of the court, who, like

[18] 84 Stat. 294 (1970).
[19] PL 91-647 (1971).
[20] 18 U.S.C. 2101.
[21] 84 Stat. 1236 (1970).
[22] 84 Stat. 1880 (1970).
[23] 84 Stat. 922 (1970).
[24] *Annual Report of the Director,* etc., *supra,* n. 9, p. 196.
[25] *Ibid.,* p. 184.

other federal judges, are appointed by the President with the consent of the Senate, have tenure during good behavior and receive salaries of $60,000, with the Chief Justice paid $62,500. In recent years, the court has shown increased concern with the realities of the administration of justice in both state and federal courts so far as the constitutional rights of defendants are adversely affected. It has handed down numerous decisions that seek to control the conduct of law enforcement personnel toward the defendant before trial and to increase the opportunities for court review after trial. This has meant that counsel for the defendants, whether retained or appointed by the court as required for indigents, can raise a number of issues concerning the authority for an arrest, search and seizure, the admissibility of inculpating statements of a defendant, the manner in which a lineup was conducted and many others before, during and after trial.

In addition to the Supreme Court's scrutiny of federal criminal proceedings, it has the power to review state criminal convictions if the prisoner can raise a serious constitutional issue. Since virtually all the procedural guarantees of the Bill of Rights have been held applicable to the states in recent years through the medium of the due process clause of the Fourteenth Amendment, chances for raising constitutional issues are readily available to state defendants.

The seemingly large number of cases disposed of in each term by the Supreme Court is somewhat misleading. The great bulk of the 3,357 cases disposed of in the 1969 term of the Supreme Court resulted in only 112 written opinions of substantial length.[26] Thirteen federal criminal convictions were reviewed, with ten decided against the government. Eight more cases involved federal habeas corpus appeals, with the government losing three. There were eight habeas corpus appeals involving state prisoners and ten cases involving review of state convictions, nine of which were decided adversely to the state.

[26] "The Supreme Court, 1969 Term," 84 Harv. L. Rev. 247–250 (November, 1970).

A legal development tending to increase the concern of federal courts below the Supreme Court with state criminal proceedings is the increasing availability of the writ of habeas corpus to state prisoners. It is no longer necessary for state prisoners to pursue a variety of state procedural remedies before invoking the power of a federal district court to issue the writ. If any one available route of state review is followed, the prisoner is then deemed to have exhausted his state remedies. The greater availability of counsel and the increased sophistication of prisoners, both state and federal, with respect to their constitutional rights, are other factors causing an increase in the use of habeas corpus, the classic writ for testing the validity of a man's detention by the authorities.

While a number of federal court reforms have been made or are in the process of implementation, the ideal of having established time standards for completing each step in criminal proceedings as recommended by the President's Commission on Law Enforcement and Administration of Justice is far from a reality, though the federal situation is better than that of many states. Provisions of more judges, better court administration and other mechanisms promise to bring the federal courts closer to the goal of swifter justice, but the process must be one that is just as well as swift. Perhaps it can be argued that we have gone further than is necessary or desirable in providing opportunities for numerous appeals and habeas corpus petitions, but

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"In attempting to make administration more 'just'," notes this specialist, "the Supreme Court has clearly made the process more complicated, more time-consuming and more expensive." As he points out, "The decisions of the court have made it clear that [its] objective[s] can . . . be served only if there is the allocation of more human and financial resources to the system of criminal justice administration."

The Role of the Supreme Court

By Frank J. Remington
Visiting Professor of Law, University of Minnesota

During the decade of the 1960's, the Supreme Court of the United States gave a great deal of its attention and its effort to the review of various aspects of criminal justice and juvenile justice administration. The decade has been described as "the criminal law revolution." It has been claimed as a time of great progress by the admirers of the Warren Court and as a "handcuffing" of police by critics of that court.

In evaluating change in criminal justice administration, it has become popular to do so with reference to the impact of change on the "war on crime" or the maintenance of "law and order," on the one hand, or its impact on the attainment of "justice" or "fairness," on the other hand.

Have the decisions of the 1960's brought about a more perfect system of justice? Has there been an undue sacrifice of law and order? How significant has the role of the Supreme Court been? As a start, it may be helpful to describe briefly some of the more important decisions of the court as they relate to the work of (a) the police, (b) prosecutors and judges, (c) correctional agencies, and finally (d) the juvenile justice system.

Police and the Court. In 1961, the court decided the landmark *Mapp v. Ohio* case.[1] In it, the court held that all courts must exclude evidence obtained by police in violation of the federal constitutional rights of the defendant. What is a violation of federal constitutional rights is a question ultimately for the United States Supreme Court. After *Mapp,* the decisions of the Supreme Court were to have great impact upon state prosecutions, because the standards fixed by the Supreme Court were binding not only upon federal courts but also upon state and local courts.

The initial effect of the *Mapp* case was felt with respect to police efforts to seize physical evidence and use it in evidence. Whereas before *Mapp,* city police could introduce narcotics into evidence regardless of the way in which the narcotics may have been seized, following *Mapp* the evidence could be used only if it were first shown by the prosecution that the seizure of the narcotics was consistent with Fourth Amendment requirements. The Supreme Court, in a series of cases, defined the scope of the Fourth Amendment as it relates to the search for and seizure of physical evidence, holding, for example, that there must be a showing of probable cause in writing for a valid search warrant to issue; that a search incident to an arrest is a very limited one confined to an

[1] 367 U.S. 643 (1961).

area where the arrested person might have a gun or other weapon or might be able to reach and destroy evidence of his guilt; and that even health and safety inspections must comply with Fourth Amendment requirements.

Soon the court also extended the scope of the exclusionary rule to situations other than searches for physical evidence. It held in *Wong Sun*[2] that an oral statement is not usable in evidence if the oral statement is obtained in consequence of a Fourth Amendment violation.

Later, in *Katz v. United States*,[3] the court held that the Fourth Amendment protects "people not places," and therefore protection previously accorded to the home and other places now extended to the person and made improper any police intrusion where the citizen had a "reasonable expectation of privacy." This has had an impact upon a variety of police surveillance practices. It means that police looking at what people are doing and listening to what they are saying is improper if the citizen wants privacy and if his expectation of privacy is reasonable under the circumstances. If police want to look or listen in situations of privacy, they must comply with the Fourth Amendment by getting authorization to do so from a court.

Not all the cases limited the authority of the police. In *Terry v. Ohio*[4] the court held that police can stop and frisk a suspect if there is reasonable ground to suspect him of a crime even though no "probable cause" exists for an arrest. And, in *Chambers*[5] the court said that police can search a vehicle without a warrant if they have probable cause to believe that the vehicle contains contraband. The court held in *Warden v. Heyden*[6] that police can get a warrant for "mere evidence" of crime. Recently, the court sustained the recording of a suspect's statement by a recording device secreted on the person of an undercover agent.

The court also gave expanded meaning to the Fifth Amendment, holding in *Miranda*[7] that a confession obtained by police in an in-custody interrogation is inadmissible unless the police have given the suspect notice of his Fifth Amendment rights and his right to counsel. This decision has influenced police interrogation practices. It has become common for police to read the so-called *Miranda* warning to any suspect whom the police want to interrogate. If the suspect expresses a desire not to be questioned or asks for a lawyer, the interrogation must cease and any admission or confession subsequently obtained from the suspect is not admissible in evidence against him.

During the 1960's, the court gave increasing attention to the setting of standards of proper police investigative practices. This was done by requiring the exclusion of evidence obtained by federal, state and local police in violation of the court standards.

Prosecutor-Court. In 1963, the court held, in *Gideon v. Wainright*[8] that all defendants charged with serious crimes have a right to be represented by a lawyer. At first, the right extended only to representation at trial, but through later decisions the court has extended the right to counsel to a lineup or interrogation held in the police station, to the initial stages of the judicial process, such as the preliminary hearing, to the guilty plea process, to sentencing and, more recently, to certain correctional decisions such as the revocation of probation or parole.

The court has also increased the responsibility of the prosecutor. In *Brady v. Maryland*[9] the court said that the prosecutor has a duty to disclose to the defense any evidence which the prosecutor has which is exculpatory, that is, might help acquit the defendant or lessen the seriousness of the charge or the sentence.

During the past couple of years the court has given a great deal of attention to the guilty plea process. In the past there were

[2] *Wong Sun v. U. S.*, 371 U.S. 471 (1963).
[3] 389 U.S. 347 (1967).
[4] 392 U.S. 1 (1968).
[5] *Chambers v. Florida*, 309 U.S. 227 (1940).
[6] 387 U.S. 294 (1967).
[7] *Miranda v. Arizona*, 384 U.S. 436 (1966).
[8] *Gideon v. Wainright*, 372 U.S. 335 (1963).
[9] 373 U.S. 83 (1963).

strong protections for the defendant who pleaded not guilty; none for the defendant who was willing to plead guilty. Now the judge must be sure the defendant understands the charge, the consequences of conviction, and the rights which he gives up in pleading guilty. The judge must also insure that an innocent man does not plead guilty out of ignorance of the law. And the court has very recently said that an agreement reached between prosecutor and defense counsel must be disclosed and is subject to review by the trial judge.

All of the decisions were not restrictions upon the prosecution. The court has also held that the government can require a defendant to give pretrial notice of his intention to rely upon an alibi defense and can utilize a jury of less than 12 persons.

Until the past decade, courts have not been willing to review correctional practices. They took a "hands-off" attitude with the view that correctional personnel were trying to help convicted offenders and that offenders had the protection of due process prior to conviction. Correctional decisions such as probation, parole and "good time" allowances were expressions of leniency to which the offender had no legal right; therefore he had no right to ask a court to intervene when he felt aggrieved by a correctional decision.

During the past decade courts, including the United States Supreme Court, have shown an increasing willingness to review correctional practices; to decide whether a solitary confinement practice is proper; whether an inmate can be disciplined for giving legal advice to another inmate; whether probation can be revoked without a hearing and a right to counsel; and other similar issues of importance both to the inmate and to the correctional system. Increasingly, courts are willing to step in and set proper standards if correctional agencies are unable or unwilling to do so.

JUVENILE JUSTICE ADMINISTRATION

Until this past decade, the Supreme Court has not attempted to set standards for juvenile justice administration. The prevalent assumption was that the juvenile justice system was designed to serve the "best interests" of the child and that this high motivation was sufficient protection against injustice. This attitude has changed. There is increasing skepticism about whether the juvenile justice process is in fact a "help" to the child processed by it. And there is increasing reluctance to rely on high motivation and professionalism as adequate protection against unfairness. In the *in re Gault* decision,[10] the Supreme Court gave indication that it would subject the juvenile process to the same careful review that it had given to the adult criminal process and that it would insist that the child receive procedural protection comparable to that accorded to the adult.

This decade of decision-making by the Supreme Court has had an obviously significant impact upon the criminal justice system. Today, most defendants are represented by counsel, a situation which did not exist a decade ago. And, through the development of new defender offices, lawyers are better able to give good representation than they were a few years ago. Police practices have changed. There is much greater stress, in police training, on proper standards for searching suspects, conducting surveillance, handling lineups and eyewitnesses generally, conducting interrogations and making arrests. A lot more care is used in the guilty plea process, with new safeguards to insure that the plea is an intelligent one made by a person guilty of the crime to which he pleads guilty. Correctional practices in prisons and relating to probation and parole are being given increased scrutiny, and there are developing new safeguards against unfairness and arbitrariness. And the juvenile is the recipient of more in the way of procedural safeguards.

Why was the Supreme Court so much concerned with criminal and juvenile justice administration during the 1960's? Has the court done all that it is able to do to improve the administration of justice? If problems

[10] *In re Gault*, 387 U.S. 1 (1967).

remain, as they surely do, whose responsibility is it to deal with those problems if not the Supreme Court?

There is every reason to believe that the Supreme Court was heavily involved with criminal and juvenile justice issues during the 1960's because of the almost total failure of other agencies of government to deal with the problems which clearly existed. In the landmark case of *Mapp v. Ohio,* the court said that it concluded, reluctantly, that police, prosecution and state trial courts would not or could not take effective steps to prevent illegal searches. The court felt compelled therefore to intervene if the ends of justice were to be served. A similar conclusion was reached later in the decade with respect to a variety of prosecutor, trial court and correctional practices which came to the attention of the Supreme Court.

THE COURT'S LIMIT

There is, however, a limit to the capacity of the Supreme Court to deal with the range of problems which exist in criminal and juvenile justice administration. For the most part, the court can act only when an adult or juvenile has been convicted and desires to raise an issue which has arguably affected the propriety of that conviction. Usually the Supreme Court is not involved if the case results in an acquittal, and there are therefore many practices which may lead to acquittal which are not subject to Supreme Court review. And, more important, there are all kinds of practices, particularly by police, which do not result in arrest, prosecution and conviction and therefore never come to the attention of the court. This was recognized by Chief Justice Earl Warren in *Terry v. Ohio*:

> Regardless of how effective the [exclusionary] rule may be where obtaining convictions is an important objective of police, it is powerless to deter invasions of . . . constitutionally guaranteed rights where police . . . have no interest in prosecuting. . . . The wholesale harassment by certain elements of the police community, of which minority groups, particularly Negroes, frequently complain, will not be stopped by the exclusion of any evidence from any criminal trial. . . . No judicial opinion can comprehend the protean variety of the street encounter, and we can only judge the facts of the case before us.

In attempting to make administration more "just," the Supreme Court has clearly made the process more complicated, more time-consuming and more expensive. The various rules controlling police practices are implemented by defense counsel's pretrial motions to suppress the evidence thus obtained. This takes time and often the trial judge's decision, if adverse to the defense, will form a basis for a time-consuming appeal. Of critical concern today is the undue delay and the lack of finality in the administration of justice. This tends to defeat the public interest in the prompt disposition of criminal cases. It has long been said that the objectives of criminal justice administration are achieved not by severity of punishment, but rather by its promptness and its certainty. The decisions of the court have made it clear that this objective and the objective of fairness can both be served only if there is the allocation of more human and financial resources to the system of criminal justice administration. To date, legislatures have been unwilling to allocate the resources so obviously needed.

Even if all the decisions of the Supreme Court are fully complied with and even if legislatures allocate the funds necessary to provide prompt and effective as well as fair and just implementation of those decisions, problems will remain. Much of what police, prosecutors and trial courts do will never come to the attention of appellate courts.

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". . . at its birth, the United States adopted the basic English jury system . . . ," writes this specialist, who points out that "Because of the increasing length of court calendars and the resulting court congestion, and the further need for economy in this sphere of civic administration, the curtailment of the right to a jury has been gathering speed."

The American Jury System

By Morris J. Bloomstein
Author of *Verdict: The Jury System*

Before we can ascertain whether the jury system, as presently constituted, is necessary in today's America, we must examine the roots of an institution that arose in other times and in a different milieu. Were the needs of the people then so dissimilar to those of today?

England was not "the" cradle of the jury system. Greece and Rome knew forms of it, as did the Germanic tribes, the Scandinavians and the Normans. When the latter invaded England and brought their own version, a native brand of local justice was already flourishing on English soil.

Although most historians defend their own pet theories as to the origin of the English form of jury, it is safe to say that no one has actually proven its parentage. Suffice to say that invading waves of Norsemen, Picts, Scots, Angles, Saxons and Normans all came to the island, taking much, yet each group leaving its own peculiar dispute-deciding technique, its "law."

When Caesar invaded Britain in 55 B.C., his administrator, C. Julius Agricola, introduced Roman law. This lasted until 448 A.D., when the last Roman legions withdrew. Yet even before their coming, the people in each village would meet to decide the issues and disputes of the day. The great English legal commentator, Sir William Blackstone, wrote:

> . . . a trial that hath been used time out of mind in this nation and seems to have been coeval with the first civil government thereof . . . certain it is that juries were in use among the earliest Saxon colonies.[1]

Another historian, Sir Francis Palgrave, stated that the Anglo-Saxons had juries, that is to say, a jury of sworn witnesses, to determine property rights, but that he believed that the jury in criminal cases was not known until William the Conqueror. Other theories hold that the system was a modification of the Grand Assize established by Henry II, partly in imitation of the feudal courts established in Palestine by the Crusaders. Still others firmly state that juries were introduced into England during the reign of Henry III.

It appears, however, that the institution first was noticed on the overall scene during the reign of King Alfred (871–901). It was this same Alfred of legend who first established an overall juridical system for England. He simply divided the country into counties, the counties into hundreds, and the hundreds into tithings. Ten abutting householders formed one tithing; every householder was responsible for the conduct of his own family. Ten tithings formed a hundred. Each man in the country was required to register with one tithing or another, or be declared an outlaw. Thus, everyone was responsible to someone.

[1] William Forsyth, *History of Trial by Jury*, new edition, James Appleton Morgan (New York: James Cockcroft & Co., 1875).

When conflicts appeared, the entire tithing would meet and decide—a rough jury, true, but a basis for the future. There were even provisions for an appeal to the hundred's representatives, who met every four weeks. When this appeal was demanded, twelve freeholders of the hundred, presided over by a quasi-judge, would decide the case, while swearing to render impartial justice.

When Alfred died, times, changing customs and war decayed the structure and compurgation took its place. Compurgation was simply oath-taking, and bore very little resemblance to any jury system. Introduced by the Saxons and at first limited to criminal matters, it was subsequently extended to all cases. It was a natural outgrowth of a culture in which the number of allies a man had was more important than the truth. The only fact that the compurgators swore to before a judge was that their friend was a truthful and honest man, and that they believed in the justness of his cause. As a rule, they did not even know the facts of the issue, and so could not even qualify as present-day witnesses. They were not true jurors, for no evidence was presented to them. Instead, the compurgators, usually 12 in number, merely united in their oath that their friend was a "good boy." For the ordinary civil dispute, the group oath was conclusive, unless. . . .

The "unless" was what destroyed compurgation. If the opposing party gathered together a greater number of compurgators, he won, unless. . . . Ad infinitum, to the extent that a person named Ulnothus once produced a thousand witnesses to prove title to an estate! In criminal cases, if the oath-takers agreed, and the defendant was not caught red-handed, there was usually an acquittal, unless very special circumstances intruded.

The general rule of that roughhewn age was that might makes right; thus, witness friends were counted, instead of their testimony being weighed. Of course, if each side had about the same number of oath-takers, the relative ranks of the compurgators and parties were taken into account.

But even relatively uncivilized people wake up eventually, and it soon dawned on everyone that compurgation proved nothing. Thus the system was modified, and appointments were made in each district of sworn witnesses whose duty it was to attend all sales, executions of charters and similar dealings. They could not be cross-examined, and their oaths were conclusive as to the facts. Later, persons qualified by circumstances but not preappointed were called on to testify as to age, ownership of chattels and the like.

THE NORMAN CONQUEST

Then came the Normans, who left more untouched than they changed. They adopted the local Anglo-Saxon courts, appeals to the king, the use of legal witnesses and compurgation. Certain changes, of course, were made. The spiritual and temporal courts were separated, thus curtailing the clergy. The king appointed circuit judges, men who traveled the realm and dispensed the king's justice, thus opposing the "hundred" or county court. In this way, judicial power was centralized in the person of the king, and each locality was no longer allowed to decide its own disputes.

The Normans also brought to England the inquest and inquisition to determine facts. Persons representing townships met under the supervision of a judge and decided disputes. Unfortunately, their decisions were based on their own knowledge, and they rarely heard witnesses. At this time, too, there appeared accusatory tribunals whose duty it was to charge offenders and to lay the basis for a trial before a judge. The number of such persons usually exceeded 12. So began the roots of the grand jury.

Through this blending of Norman and Anglo-Saxon institutions, the assize arose. This was an almost direct forerunner of the modern jury, although almost unrecognizable by one accustomed to today's usage.

In certain selected cases, men of the neighborhood where the offense had been committed still gathered in an inquest. The old system was carried over, so that these men were selected on the basis of their knowledge

of the facts. However, friends, enemies and near relations of the parties were excluded.

These germinal jurors were called recognitors. Although used initially in criminal matters, the system was soon applied to civil cases. The recognitors were usually 12 in number or a multiple thereof.

During the reign of Henry II, trial by jury was rather general, especially in real estate and allied matters. During the later reign of Edward I, the nature of juror-recognitors changed from witnesses of the facts to those having no knowledge of the circumstances. The original recognitors then became witnesses, and the system would have been recognizable in a modern courtroom. This system reached its fruition in the reign of Edward III, about 1350 A.D.

THE JURORS' ORDEAL

In that day and age, being a juror was a physical and mental ordeal. Records reveal that some juries went without food or other sustenance until they reached a verdict. In addition, the worst danger was being held guilty of attaint. If the authorities decided that a jury had reached an improper decision, they would convene a second jury which would convict the first panel of having rendered a false verdict. This would imply perjury on the part of the original juror-recognitors, and the penalty often was forfeiture of their property and liberty. Attaint originated about the year 1200 A.D., when the jurors were witnesses, so the original basis for attaint was not too shocking. After all, we still punish deceitful witnesses.

The astonishing part of attaint, however, was that it was still in force as late as 1670. It was then that a jury found not guilty two men who were being persecuted for their religious beliefs, although the English statutes of that time clearly classified their conduct as guilty. The trial judge immediately held the entire jury guilty of attaint, whereupon riots broke out throughout England. On appeal, attaint was eliminated. It is interesting to note that one of the two men being tried was William Penn, founder of Pennsylvania.

In that same case, it was finally held that if a juror had knowledge of the facts of the case, he must inform the court and be sworn as a witness. Finally, in 1816, it was decided that a verdict based on facts not in evidence, but founded on the jury's own peculiar knowledge, was improper.

CRIMINAL CASES

With regard to the development of the jury system in criminal cases, in the year 1194, Richard I provided for 12 knights in the county or shire to accuse and try the alleged offenders, thereby combining the function of a grand jury (accusatory) and a petit jury (triers of the facts). This tended to nudge compurgation aside. By the Act of the Lateran Council of 1215, the two juries were split. Toward the end of the thirteenth century, trial by jury in criminal cases had become common or, at times, even mandatory. This was the case even though the defendant did not want a jury trial because of his bad reputation or because of the heinous nature of the crime. In fact, in the thirteenth century, if the defendant refused to be tried by a jury, it was deemed a confession of guilt.

Almost as bad was standing mute when asked to plead to a crime or submit to a jury trial. As one British observer of the eighteenth century noted:

> The English judgment of penance for standing mute was as follows: that the prisoner be remanded to the prison from whence he came; and put in a low, dark chamber; and there be laid on his back, on the bare floor, naked, unless where decency forbids; that there be placed upon his body as great a weight of iron as he could bear, and more; that he have no sustenance, save (on alternate days) . . . three morsels of the worst bread and . . . three draughts of standing water . . . and in this situation the person should remain till he died or till he answered.

Why did prisoners, guilty or innocent, stand mute? If they were found guilty in any other manner except before a judge and jury, or if they died before trial, their lands and goods were not forfeit to the Crown, and their families would have something to survive on. In 1827, this practice was abolished.

Was the jury that important in England? As Blackstone wrote:

> But in settling and adjusting a question of fact, when intrusted to any single magistrate, partiality and injustice have an ample field to range in. . . . Here, therefore, a competent number of sensible and upright jurymen, chosen by lot from among those of the middle rank, will be found the best investigators of truth, and the surest guardians of public justice.[2]

In fact, Alexis De Tocqueville, commenting on the system and its place in English life, stated unequivocally that, during the time of the Tudors, the civil jury saved the liberties of England.[3]

In the nineteenth and twentieth centuries, the role of the jury diminished in England. Until 1854, trial by jury was the only form of trial used in any court of common law. Later, this rule was modified so that, if both sides so stipulated, the jury could be waived and a decision could be made solely by the common law judge. In 1873, the great year of law reform, the right to a jury trial was substantially cut down, and any number of matters, such as actions for accounting, were tried by a judge alone. Toward the end of World War I, juries became even less available. By the Acts of 1918 and 1933, in an attempt to cheapen the price of litigation, the right to a jury trial was even further diminished. This trend continued so that, by 1962, only two per cent of the civil cases in England were being tried before a jury. Truly, justice in England was being cheapened, or made cheaper, whichever way you cared to regard this development.

JURIES IN THE COLONIES

Security in strange surroundings is a vital need, so that when Englishmen came to the American wilderness, they retained many of the sheltering ways of their homeland, including the jury system. In each colony, the administration of justice occupied a basic position, with modifications. For instance, in western Massachusetts, in 1638, 12 fit men could not be found to serve on a jury because most men were ill, working, or needed for defense. Thus it was agreed that juries of six could be used in minor matters (a forerunner of today.)

When one considers that the various colonial grants were made over a period of 125 years, by various monarchs, for varied reasons, and upon different terms, it is amazing that all the colonies used both grand and petit juries.[4]

During the colonial regimes (as has always been the developing pattern between mother nations and colonials), the King and his ministers were not always pleased with the way colonial juries tended to favor local defendants in what the British regarded as clear-cut violations of England's statutes respecting the colonies. Once again, juries, deeming the statutes oppressive and representing the conscience of the community, were pressed into the forefront of the battle for rights and liberty.

In 1734, John Peter Zenger, a New York newspaper publisher, constantly criticized the royal governor, William Cosby, in violation of the then existing criminal libel laws. On trial before a jury of colonists, but under the eagle eye of a government-appointed judge, he interposed the defense of freedom of the press. Judge De Lancy directed the jury merely to decide if Zenger had printed the statements; if they so ruled he would decide whether the statements were libelous. Defying the judge, a verdict of not guilty was returned, thus establishing the right of freedom of the press and the power of the jury.

The kettle of revolution was brewing in 1765, when delegates from nine colonies convened in New York and published a Declaration of Rights. Two of the primary items stressed were the colonies' power to tax themselves and the colonists' right to trial by jury.

This basic right of determination by neighbors was even embodied in the Declaration of Independence, where one of the complaints

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[2] *Commentaries on the Laws of England.*
[3] *Democracy in America,* Volume I, Second Edition.
[4] Francis X. Busch, *Law and Tactics in Jury Trials* (Indianapolis: The Bobbs-Merrill Co., Inc., 1940).

against the King was, "For depriving us in many cases of the benefits of trial by jury."

Following the Revolution, surprisingly, the Founding Fathers made light of the need expressly to guarantee the system for which they had clamored. The Articles of Confederation, approved prior to the Constitution, did not mention jury trials at all. The original federal Constitution made no provision for trial by jury in civil cases, or for grand juries. It only provided, in Article III, Section 2, for juries in criminal matters in federal courts.

Thomas Jefferson and Patrick Henry led the assault for more explicit and expanded rights in this regard. Jefferson stated, "I consider trial by jury as the only anchor ever yet imagined by man by which a government can be held to the principles of the Constitution."

Patrick Henry, cited in *Elliott's Debates,* stated:

> Trial by jury is the best appendage of freedom . . . We are told that we are to part with that trial by jury by which our ancestors secured their lives and property. . . . I hope we shall never be induced, by such arguments, to part with that excellent mode of trial.

Hamilton, although not daring to oppose the jury system, wrote *Federalist Paper 88,* ridiculing the idea that the Constitution as originally written would eliminate civil juries. Most of the states, not taking chances, adopted state constitutions embodying the right within their own framework. Still, the requirement of such a trial in a federal court remained unclear until the Bill of Rights was passed. The Fifth Amendment provided for grand juries. The Sixth Amendment provided for petit juries in criminal matters. It was only the Seventh Amendment that provided for such means of trial in civil cases. It must be understood that, as far-reaching as these amendments were, they applied only to federal courts, and the states, at any time, could have changed their methods of adjudication within their own courts.

Thus, at its birth, the United States adopted the basic English system. Even in England, however, juries were not provided in all cases. At that time, three of the major English court divisions—King's Bench, Common Pleas, and the Exchequer—provided in most instances for juries, but Chancery, dealing with equity (those matters which would not and could not be fitted snugly into common law causes of action) used no jurors. Therefore, although the Bill of Rights seemed to have granted such trials in all cases, the original distinctions practiced in England were retained in the United States. Much later, when it was realized that the states could not be allowed to tamper with such a basic judicial right, the Fourteenth Amendment was enacted, which provided, in part; "Nor shall any state deprive any person of life, liberty or property without due process of law." Here, due process was taken to mean the law and usage customary in England before the Revolution, and in America thereafter.

The courts themselves later defined and delineated the right to jury trial. In *Parsons* v. *Bedford,* 28 U.S. 433 (1830), Justice Joseph Story of the Supreme Court traced the theories of the Seventh Amendment and defined the distinction between law and equity. In many cases, the Supreme Court began to limit the right to jury trial, as in *Walker* v. *Sauvinet,* 92 U.S. 90 (1875), and *Marvin* v. *Trout,* 199 U.S. 212, 26 S. Ct. 31 (1905).

By and large, however, the thrust of United States policy in its early years was to expand the right to jury trial. As each territory was acquired, Congress exercised its dominion over the new tracts, and each area had new courts which followed the old rules, with common law juries, 12 in number, calling for

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Morris J. Bloomstein, a New York City trial lawyer, has been intimately involved with the jury system on a day-to-day basis for almost 20 years, and is the author of *Verdict: The Jury System* (New York: Dodd-Mead, 1968). His research interests deal with the reasons for the decline of the use of the jury in the United States and throughout the world.

BOOK REVIEWS

READINGS ON THE ADMINISTRATION OF JUSTICE IN AMERICA, PART I

By Karen Dobkin Fortney

Abraham, Henry Julian. *Freedom and the Court.* New York: Oxford University Press, 1967.

———. *The Judicial Process—An Introductory Analysis of the Courts of the United States, England and France.* New York: Oxford University Press, 1962.

———. *Courts and Judges—An Introduction to the Judicial Process.* New York: Oxford University Press, 1959.

Acheson, Patricia C. *The Supreme Court: America's Judicial Heritage.* New York: Dodd, Mead, 1961.

Ainsworth, Robert A. "Judicial Ethics—The Federal Judiciary Takes an Historic Step Forward." *Judicature,* October, 1970.

Allen, Francis. *The Borderland of Criminal Justice.* Chicago: University of Chicago Press, 1964.

Allott, Anthony N. *Judicial and Legal Systems in Africa.* London: Butterworths, 1962.

American Assembly. *Ombudsmen for American Government?* Englewood Cliffs, N.J.: Prentice-Hall, 1968.

American Bar Association. *Law and Courts in the News.* A layman's handbook of court procedures, with a glossary of legal terminology. Chicago: Committee on Public Relations, 1960.

———. *Project on Minimum Standards for Criminal Justice Standards Relating to Fair Trial and Free Press.* New York: Institute of Judicial Administration, 1967.

American Newspaper Publishers Association. *Free Press and Fair Trial.* New York: American Newspaper Publishers Association, 1967.

"American Slavery and the Conflict of Laws." *Columbia Law Review,* January, 1971.

Andenaes, Johannes. "The Morality of Deterrence." *The University of Chicago Law Review,* Summer, 1970.

Ashman, Allan; Douglas R. Gill; and William A. Campbell. *Laws of Arrest, Search, Seizure and Evidence.* Chapel Hill: Institute of Government, University of North Carolina, 1967.

Aumann, Francis Robert. *The Changing American Legal System.* Columbus: The Ohio State University Press, 1940.

Barrett, Edward L., Jr. "Criminal Justice: The Problem of Mass Production," in *The Courts, the Public and the Law Explosion,* edited by Harry W. Jones. Englewood Cliffs, N.J.: Prentice-Hall, 1965.

Beaney, William M. *The Right to Counsel in American Courts.* Ann Arbor: University of Michigan Press, 1955.

———; Max Freedman; and Eugene V. Rostow. *Perspectives on the Court.* Evanston, Illinois: Northwestern University Press, 1967.

——— and Alpheus T. Mason. *American Constitutional Law.* 3rd ed. Englewood Cliffs, N.J.: Prentice-Hall, 1964.

———. *Supreme Court in a Free Society.* Englewood Cliffs, N.J.: Prentice-Hall, 1959.

Berger, Raoul. *Congress Against the Supreme Court.* Cambridge, Mass.: Harvard University Press, 1969.

Bickel, Alexander M. *Politics and the Warren Court.* New York: Harper & Row, 1965.

Biddle, Francis B. *Justice Holmes, Natural Law and the Supreme Court.* New York: Macmillan, 1961.

Black, Hugo L. "The Bill of Rights." *New York University Law Review,* April, 1960.

Bloomstein, Morris J. *Verdict: The Jury System.* New York: Dodd, Mead, 1968.

Borkin, Joseph. *The Corrupt Judge: An Inquiry into Bribery and Other High Crimes and Misdemeanors in Federal Courts.* New York: C. N. Potter, 1962.

Braithwaite, William. *Fair Trial—Free Press: A Memorandum on the Problem and Some Solutions.* [40 pp.] Chicago: American Bar Foundation, 1966.

Brennan, William J. "The Bill of Rights and the States." *New York University Law Review,* April, 1961.

Burdman, Milton. "Conflict Between Freedom and Order." *Crime and Delinquency,* July, 1969.

Callison, Israel Putnam. *Courts of Injustice.* New York: Twayne Publishers, 1956.

Carter, Dan T. *Scottsboro: A Tragedy of the American South.* Baton Rouge: Louisiana State University Press, 1969.

Carter, Robert M. and Leslie T. Wilkins, eds. *Probation and Parole: Selected Readings.* New York: John Wiley & Sons, 1970.

Chroust, Anton-Hermann. *The Rise of the Legal Profession in America.* Norman: University of Oklahoma Press, 1965.

Clark, Ramsey. *Crime in America: Some Observations on its Nature, Causes, Prevention and Control.* New York: Simon & Schuster, 1970.

Clark, Tom C. "Wiretapping and the Constitution." *California Western Law Review,* Fall, 1968.

Cohen, Morris. *Reason and the Law.* New York: Collier Books, 1961.

Countryman, Vern and Ted Finman. *The Lawyer in Modern Society.* Boston: Little, Brown, 1966.

Cox, Archibald. "Chief Justice Earl Warren." *Harvard Law Review,* November, 1969.

Cummings, Homer and Carl McFarland. *The History of Justice and the Federal Executive.* New York: Macmillan, 1937.

Cutler, Lloyd N. "Civil Strife and Law." *Federal Rules Decisions,* November, 1969.

Dash, Samuel; Richard J. Medalie; and Eugene L. Rhoden. "Demonstrating Rehabilitative Planning As a Defense Strategy." *Cornell Law Review,* February, 1969.

Devlin, Patrick. *The Enforcement of Morals.* London: Oxford University Press, 1965.

———. *Trial by Jury.* London: Stevens and Co., 1956.

Dunham, Allison and Philip B. Kurland, eds. *Mr. Justice.* Chicago: University of Chicago Press, 1964.

Ellenbogen, Henry. "Automation in the Courts." *American Bar Association Journal,* July, 1964.

Ernst, Morris L. and Alan U. Schwartz. *Privacy: The Right to be Let Alone.* New York: Macmillan, 1962.

"Exclusive Interview with Chief Justice Warren E. Burger." *U.S. News and World Report,* December 14, 1970.

Fellman, David. *The Defendant's Rights Under English Law.* Madison: University of Wisconsin Press, 1966.

———. *The Defendant's Rights.* New York: Rinehart & Co., 1953.

Felsher, Howard and Michael Rosen. *The Press in the Jury Box.* New York: Macmillan, 1966.

Flaherty, David H., ed. *Essays in the History of Early American Law.* Chapel Hill: University of North Carolina Press, 1969.

Foote, Caleb, ed. *Studies on Bail.* Philadelphia: University of Pennsylvania Law School, 1966.

———. "Coming Constitutional Crisis in Bail." *University of Pennyslvania Law Review,* May–June, 1965.

———. "Preventive Detention Before Trial." *Harvard Law Review,* May, 1966.

Frank, Jerome. *Courts on Trial: Myth and Reality in American Justice.* New York: Atheneum, 1963.

Frank, John P. *American Law: The Case for Radical Reform.* New York: Macmillan, 1969.

———. "Radical Judicial Reform—A Symposium." *Texas Law Review,* June, 1969.

———. *The Warren Court.* New York: Macmillan, 1964.

Frankfurter, Felix. *Of Laws and Men.* Edited by Philip Elman. New York: Harcourt, Brace, 1956.

Freed, Roy N. "Computers in Judicial Administration." *Judicature,* May, 1969.

Friesen, Ernest and Edward Gallas. *Managing the Courts.* Indianapolis: Bobbs-Merrill, 1971.

Garrison, Lloyd K., ed. *The Legal Process: An Introduction.* San Francisco: Chandler Publishing Co., 1961.

Gay, Peter and Richard H. Prunier. *The Policeman and the Accused—Search and Seizure Rights of the Accused.* Cambridge, Massachusetts, 1965.

Geis, Gilbert. *Man, Crime and Society.* New York: Random House, 1962.

George, B. James, Jr. *A New Look at Confessions: Escobedo—The Second Round.* Ann Arbor, Mich.: Institute of Continuing Legal Education, 1967.

———. *Constitutional Limitations on Evidence in Criminal Cases.* Ann Arbor, Mich.: Institute of Continuing Legal Education, 1966.

Gerald, J. Edward. *The Social Responsibility of the Press.* Minneapolis: University of Minnesota Press, 1963.

Gillmor, Donald M. *Free Press and Fair Trial.* Washington, D.C.: Public Affairs Press, 1966.

Gilmore, Grant. "On Political Trials." *Chicago Bar Record,* April, 1970.

Ginsberg, Morris. *On Justice in Society.* Baltimore: Penguin Books, 1965.

Glaser, Daniel. *The Effectiveness of a Prison and Parole System.* 2nd ed. Indianapolis: Bobbs-Merrill, 1969.

Goldfarb, Ronald. *Ransom: A Critique of the American Bail System.* New York: Harper & Row, 1965.

———. "A Brief for Preventive Detention." *The New York Times Magazine,* March 1, 1970.

——— and Alfred Friendly. *Crime and Publicity: The Impact of News on the Administration of Justice.* New York: The Twentieth Century Fund, 1967.

———. *The Contempt Power.* New York: Columbia University Press, 1963.

Gorer, Geoffrey. "Man Has No 'Killer' Instinct." *The New York Times Magazine,* November 4, 1966.

Graham, Fred P. *The Self-Inflicted Wound.* New York: Macmillan, 1970.

Green, Edward. *Judicial Attitudes in Sentencing.* New York: St. Martin's Press, 1961.

Grossman, Joel B. *Lawyers and Judges: The ABA*

and the Politics of Judicial Selection. New York: John Wiley & Sons, 1965.

Hart, Henry Melvin and Herbert Wechsler, eds. *The Federal Courts and the Federal System.* Brooklyn: Foundation Press, 1953.

Hawke, David. *The Colonial Experience.* Indianapolis: Bobbs-Merrill, 1966.

Herzog, Peter E. *Civil Procedure in France.* The Hague: Martinus Nijhoff, 1967.

Hogan, Howard T. "Some Thoughts on Juries in Civil Cases." *American Bar Association Journal,* August, 1964.

Holmes, Oliver Wendell and Harold J. Laski. *Holmes-Laski Letters.* Edited by Mark DeWolfe Howe and abridged by Alger Hiss. New York: Atheneum, 1963.

Houts, Marshall. *From Arrest to Release.* Springfield, Illinois: Charles C Thomas, 1958.

Hudon, Edward Gerard. *Freedom of Speech and Press in America.* Washington, D.C.: Public Affairs Press, 1963.

Hughes, Graham. "The Role and Rule of Law in Contemporary America," special issue. *Antioch Review,* Summer, 1970.

Hurst, Willard. *Growth of American Law.* Boston: Little, Brown, 1950.

Index to Legal Periodicals. New York: H. W. Wilson Co., annual.

Jackson, Richard Meredith. *Enforcing the Law.* New York: St. Martin's Press, 1967.

Jacob, Bruce R. and K. M. Sharma. "Justice After Trial: Prisoners' Need for Legal Services in the Criminal-Correctional Process." *Kansas Law Review,* Spring, 1970.

James, Howard. *Children in Trouble.* New York: David McKay, 1968.

———. *Crisis in the Courts.* New York: David McKay, 1968.

Johnson, Bertram. *An Analysis of Post-Discharge Criminal Behavior.* Division of Research Report Number 49. Sacramento: California Youth Authority, November, 1966.

Joiner, Charles W. *Civil Justice and the Jury.* Englewood Cliffs, N.J.: Prentice-Hall, 1962.

Jones, Harry, ed. *The Courts, the Public and the Law Explosion.* Englewood Cliffs, N.J.: Prentice-Hall, 1965.

"Justice—A Matter of Black and White." special issue. *Judicature,* April–May, 1970.

Kalven, Harry, Jr. *The Negro and the First Amendment.* Columbus: The Ohio State University Press, 1965.

——— and Hans Zeisel. *The American Jury.* Boston: Little, Brown, 1966.

Kamisar, Yale; William B. Lockhart; and Jesse H. Choper. *Constitutional Law: Cases, Comments and Questions.* 2nd ed. St. Paul: West Publishing Co., 1967.

———; Fred E. Inbau; and Thurman Arnold. *Criminal Justice in Our Time.* Charlottesville, Va.: University Press of Virginia, 1965.

——— and Livingston Hall. *Modern Criminal Procedure: Cases, Comments and Questions.* 2nd ed. St. Paul: West Publishing Co., 1966.

———. "When the Cops Were Not 'Handcuffed'." *The New York Times Magazine,* November 7, 1965.

Karlen, Delmar. *Judicial Administration: The American Experience.* Dobbs Ferry, N.Y.: Oceana Publications, 1970.

———. *Anglo-American Criminal Justice.* New York: Oxford University Press, 1967.

———. *Appellate Courts in the United States and England.* New York: New York University Press, 1963.

———. *Law in Action.* New York: Holt, Rinehart and Winston, 1964.

———. *The Citizen in Court—Litigant, Witness, Juror, Judge.* New York: Holt, Rinehart and Winston, 1964.

Kelsen, Hans and Robert Tucker. *Principles of International Law.* rev. ed. New York: Holt, Rinehart and Winston, 1966.

Keve, Paul. *Imaginative Programming in Probation and Parole.* Minneapolis: University of Minnesota Press, 1967.

———. *Prison, Probation or Parole.* Minneapolis: University of Minnesota Press, 1954.

Konefsky, Samuel Joseph. *The Legacy of Holmes and Brandeis.* New York: Macmillan, 1956.

Lacy, Dan. *Freedom and Communications.* Urbana: University of Illinois Press, 1960.

LaFave, Wayne R. *Arrest—The Decision to Take A Suspect into Custody.* Edited by Frank J. Remington. Boston: Little, Brown, 1965.

"Legitimate Scope of Police Discretion to Restrict Ordinary Public Activity: A Symposium." *Harvard Civil Rights-Civil Liberties Law Review,* Spring, 1969.

Levine, Mark; George McNamee; and Daniel Greenberg, eds. *The Tales of Hoffman.* Official transcript of the Chicago conspiracy trial. New York: Bantam, 1970.

Lewis, Norman. *The Honored Society.* New York: G. P. Putnam's Sons, 1964.

"Limiting the State's Police Power: Judicial Reaction to John Stuart Mill." *University of Chicago Law Review,* Spring, 1970.

Llewellyn, Karl Nickerson. *The Common Law Tradition: Deciding Appeals.* Boston: Little, Brown, 1959.

Locke, John. *Of civil government, two treatises* [1690].

Loewy, Arnold H. "Warren Court as Defender of State and Federal Criminal Laws." *George Washington Law Review,* July, 1969.

Lucas, Anthony. *The Barnyard Epithet and Other Obscenities, Notes on the Chicago Conspiracy*

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President Nixon on the American Judiciary

On March 12, 1971, President Richard Nixon addressed the National Conference on the Judiciary, meeting in Williamsburg, Virginia. Excerpts from his speech calling for reform in the American system of justice follow:

Our courts are overloaded for the best of reasons: because our society found the courts willing—and partially able—to assume the burden of its gravest problems. Throughout a tumultuous generation, our system of justice has helped America improve herself; there is an urgent need now for America to help the courts improve our system of justice.

But if we limit ourselves to calling for more judges, more police, more lawyers operating in the same system, we will produce more backlogs, more delays, more litigation, more jails and more criminals.

"More of the same" is not the answer. What is needed now is genuine reform—the kind of change that requires imagination and daring, that demands a focus on ultimate goals.

The ultimate goal of changing the process of justice is not to put more people in jail or merely to provide a faster flow of litigation—it is to resolve conflict speedily but fairly, to reverse the trend toward crime and violence, to reinstill a respect for law in all our people.

The watchword of my own administration has been reform. As we have undertaken it in many fields, this is what we have found: "Reform" as an abstraction is something that everybody is for, but reform as a specific is something that a lot of people are against.

A good example of this can be found in the law: Everyone is for a "speedy trial" as a constitutional principle, but there is a good deal of resistance to a speedy trial in practice.

The founders of this nation wrote these words into the Bill of Rights: "The accused shall enjoy the right to a speedy and public trial." The word "speedy" was nowhere modified or watered down. We have to assume they meant exactly what they said—a speedy trial.

It is not an impossible goal. In criminal cases in Great Britain today, most accused persons are brought to trial within 60 days after arrest. Most appeals are decided within three months after they are filed.

But here in the United States, this is what we see: in case after case, the delay between arrest and trial is far too long. In New York and Philadelphia the delay is over five months; in the state of Ohio, over six months; in Chicago, an accused man waits six to nine months before his case comes up.

In case after case, the appeal process is misused—to obstruct rather than advance the cause of justice. Throughout the state systems, the average time it takes to process an appeal is estimated to be as long as 18 months. The greater the delay in commencing a trial, or retrial resulting from an appeal, the greater the likelihood that witnesses will be unavailable and other evidence difficult to preserve or present. This means the failure of the process of justice.

The law's delay creates bail problems as well as overcrowded jails; it forces judges to accept pleas of guilty to lesser offenses just to process the caseload—to "give away the courthouse for the sake of the calendar." Without proper safeguards, this can turn a court of justice into a mill of injustice.

In his perceptive message on "The State of the Federal Judiciary," Chief Justice [Warren E.] Burger makes the point that speedier trials would be a deterrent to crime. I am certain that this holds true in the courts of all jurisdictions.

Justice delayed is not only justice denied—it is also justice circumvented, justice mocked, and the system of justice undermined.

What can be done to break the logjam of justice today, to insure the right to a speedy trial—and to enhance respect for law? We have to find ways to clear the courts of the endless stream of "victimless crimes" that get in the way of serious consideration of serious crimes. There are more important matters for highly skilled judges and prosecutors than

minor traffic offenses, loitering and drunkenness.

We should open our eyes—as the medical profession is doing—to the use of para-professionals in the law. Working under the supervision of trained attorneys, "parajudges" could deal with many of the essentially administrative matters of the law, freeing the judge to do what only he can do: to judge. The development of the new Office of Magistrates in the federal system is a step in the right direction. In addition, we should take advantage of many technical advances, such as electronic information retrieval, to expedite the result in both new and traditional areas of the law.

But new efficiencies alone, important as they are, are not enough to reinstill respect for our system of justice. A courtroom must be a place where a fair balance must be struck between the rights of society and the rights of the individual.

We all know how the drama of a courtroom often lends itself to exploitation, and, whether it is deliberate or inadvertent, such exploitation is something we must all be alert to prevent. All too often, the right of the accused to a fair trial is eroded by prejudicial publicity. We must never forget that a primary purpose underlying the defendant's right to a speedy and public trial is to prevent star-chamber proceedings, and not to put on an exciting show or to satisfy public curiosity at the expense of the defendant.

In this regard, I strongly agree with the Chief Justice's view that the filming of judicial proceedings, or the introduction of live television to the courtroom, would be a mistake. The solemn business of justice cannot be subject to the command of "lights, camera, action."

The white light of publicity can be a cruel glare, often damaging to the innocent bystander thrust into it, and doubly damaging to the innocent victims of violence. Here again, a balance must be struck: The right of a free press must be weighed carefully against an individual's right to privacy.

Sometimes, however, the shoe is on the other foot: Society must be protected from the exploitation of the courts by publicity seekers. Neither the rights of society nor the rights of the individual are being protected when a court tolerates anyone's abuse of the judicial process. When a court becomes a stage, or the center ring of a circus, it ceases to be a court. The vast majority of Americans are grateful to those judges who insist on order in their courts and who will not be bullied or stampeded by those who hold in contempt all this nation's judicial system stands for.

The reasons for safeguarding the dignity of the courtroom and clearing away the underbrush that delays the process of justice go far beyond questions of taste and tradition. They go to the central issue confronting American justice today.

How can we answer the need for more, and more effective, access to the courts for the resolution of large and small controversies, and the protection of individual and community interests? The right to representation by counsel and the prompt disposition of cases—advocacy and adjudication—are fundamental rights that must be assured to all our citizens.

In a society that cherishes change; in a society that enshrines diversity in its Constitution; in a system of justice that pits one adversary against another to find the truth—there will always be conflict. Taken to the street, conflict is a destructive force; taken to the courts, conflict can be a creative force.

What can be done to make certain that civil conflict is resolved in the peaceful arena of the courtroom, and criminal charges lead to justice for the accused and the community? The charge to all of us is clear.

We must make it possible for judges to spend more time judging, by giving them professional help for administrative tasks. We must change the criminal court system, and provide the manpower —in terms of court staffs, prosecutors and defense counsel—to bring about speedier trials and appeals.

We must insure the fundamental civil right of every American—the right to be secure in his home and on the streets. We must make it possible for the civil litigant to get a hearing on his case in the same year he files it.

We must make it possible for each community to train its police to carry out their duties, using the most modern methods of detection and crime prevention. We must make it possible for the convicted criminal to receive constructive training while in confinement, instead of what he receives now—an advanced course in crime.

The time has come to repudiate once and for all the idea that prisons are warehouses for human rubbish; our correctional systems must be changed to make them places that will correct and educate. And, of special concern to this conference, we must strengthen the state court systems to enable them to fulfill their historic role as the tribunals of justice nearest and most responsive to the people.

The Federal Government has been treating the process of justice as a matter of the highest priority. In the budget for the coming year, the Law Enforcement Assistance Administration will be enabled to vigorously expand its aid to state and local governments. Close to one-half billion dollars a year will now go to strengthen local efforts to reform court procedures, police methods and correctional action and other related needs. In my new special revenue-sharing proposal, law enforcement is an area that receives increased attention and greater funding—in a way that permits states and localities to determine their own priorities.

The District of Columbia, the only American city under direct federal supervision, now has legis-

lation and funding which reorganizes its court system, provides enough judges to bring accused persons to trial promptly, and protects the public against habitual offenders. We hope that this new reform legislation may serve as an example to other communities throughout the nation.

And today, I am endorsing the concept of a suggestion that I understand Chief Justice [Warren E.] Burger will make to you tomorrow: the establishment of a national center for state courts.

This will make it possible for state courts to conduct research into problems of procedure, administration and training for state and local judges and their administrative personnel; it could serve as a clearinghouse for the exchange of information about state court problems and reforms. A Federal Judicial Center along these lines already exists for the federal court system and has proven its worth; the time is overdue for state courts to have such a facility available. I will look to the conferees here in Williamsburg to assist in making recommendations as to how best to create such a center, and what will be needed for its initial funding.

THE AMERICAN JURY SYSTEM

(*Continued from page 361*)

unanimity of verdict. One of the earliest examples of this expressed desire to retain the system was embodied in the Ordinance for the Government of the Northwest Territory, enacted in 1787. Article II provided that "The inhabitants of said territory shall always be entitled to the benefits of the writ of habeas corpus and trial by jury."

When the time came for each territory to be admitted as a state, each new sovereignty acquired all the rights of the original 13. In addition, every state, with the exception of Louisiana (an area having a French instead of British legal heritage) provided a constitution guaranteeing the right to jury trial. In fact, even Louisiana provided for such a mode of trial, by means of legislation.

THE MODERN TREND

The trend since colonial times, at least on the state level, has been away from a rigidly structured concept of a jury trial. The federal courts were and still are behind the times with regard to modification, although their general juridical procedures are modern. It was held by the Supreme Court in 1897, in the case of *American Publishing Co.* v. *Fisher,* 166 U. S. 464, 17 S. Ct. 618, that "trial by jury," as used in the Seventh Amendment, required a unanimous verdict. The following year, the same court held that a jury had to consist of 12 persons. At the time of this writing, plans are under way to reduce the number of required jurors in certain federal cases to a panel of six, thus catching up with a great part of the country.

This trend toward a relaxation of rigidity can be easily seen in a perusal of state provisions today. For instance, in approximately 26 states, unanimous verdicts in civil cases are not required or may be waived. Only five states, however, have adopted this rule in criminal matters.

In over half of the states, the constitution has provided, or the legislature has been empowered so to provide, for less than 12-man juries in many instances.

Another watering down of the right to old-style trial by jury is the provision in three states pegging the right to juries in civil matters to the amount sued for. Since two of our newest states, Alaska and Hawaii, are part of this trio, this may represent the modern trend.

Waiver is also used to do away with the necessity for a panel decision. In civil cases, unless such right is demanded by a certain stage in the proceedings, the right is lost. Even in criminal cases, although they are regarded more seriously, waiver often occurs. In 1930, the Supreme Court decided that a defendant in a federal case could waive a jury, thus giving impetus to the current theory that jury trials are for the benefit of the accused, and are not to be used merely because they are the prescribed method of trial.

Because of the increasing length of court calendars and the resulting court congestion, and the further need for economy in this sphere of civic administration, the curtailment of the right to a jury has been gathering speed. Whether justice and the right of the people can be maintained in the face of this downhill drift remains to be seen.

FREEDOM, ORDER AND JUSTICE

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County, Illinois, there are approximately 100 police departments, each largely independent of the other. As a result, political responsibility for the decency and effectiveness of the system is widely diffused, if it can be said to exist at all. In no other advanced nation has this fragmentation proceeded so far. The absence of genuine political and administrative responsibility has resulted in the substitution of judicial supervision of criminal justice administration. Judicial supervision, in turn, has been marked by an attempt to recast many aspects of the criminal process into the adversary mold, perhaps in part to render judicial supervision easier and more effective. That the Supreme Court has made invaluable contributions to the decency of the American system of criminal justice cannot be reasonably denied. It is no condemnation of the Court to add, however, that it has provided little guidance toward the solution of many of the most pressing problems of criminal justice that today afflict us.

A GLANCE AHEAD

This brief survey has made no effort to canvass a number of the gravest difficulties that will beset the administration of justice during the years remaining in the twentieth century. One of these is the problem of doing justice under the weight of overwhelming numbers of cases burdening law enforcement agencies, the courts, and correctional facilities in our urban areas. Perhaps our concerns with doing justice in the individual case (which can never be ignored) have diverted us from the increasingly important questions of how justice can operate more reasonably and effectively as a system.

Another of these problems involves our correctional practices. Sooner or later we shall be forced to recognize that the prison is an anachronism. The sooner this perception becomes widely shared, the sooner we may be induced to give serious and practical thought to alternatives to incarceration in dealing with our serious offenders.

We are facing in the United States a grave loss of legitimacy of the legal order. By "legitimacy" I mean nothing mysterious or mystical. I refer to the capacity of the law to evoke compliance with a minimum of force from the overwhelming portion of the population. To restore legitimacy and to cure the alienation of many Americans from the legal order will require more than the reform of justice, and particularly criminal justice. Yet in this effort justice has a critical role to play, whether for good or ill. It is always the obligation of a liberal society to search, in the words of the late Max Radin, for "a juster justice, a more lawful law." Today that obligation is more than ever imperative, for on the outcome of the search depends the survival of a society whose values include the reconciliation of freedom and order.

FEDERAL LAW ENFORCEMENT

(Continued from page 340)

justice has continued. The Department's crime bill for the District of Columbia, including pretrial detention of certain "dangerous" criminal suspects, was to serve as a model for other parts of the country. The Organized Crime Control Act of 1970 expanded federal powers to prosecute syndicated gambling and created a new federal crime of association with "racketeer-influenced and corrupt organizations." Because of the increase in bombings, the 1970 act expanded federal prohibitions against the use, possession, and transportation of explosives. President Nixon has also proposed legislation authorizing the F.B.I. to investigate bombings on university campuses without a prior request from local officials. This latter measure expands federal powers that were first granted in 1960 to combat terrorist bombings of Southern schools and churches by white extremists opposed to racial integration.

In the early 1970's, therefore, the Justice Department's functions extend far beyond its earlier role in the investigation and prose-

cution of a limited number of federal offenses. New laws have added to the department's jurisdiction in the fields of civil rights, organized crime and domestic unrest. The F.B.I. now maintains surveillance over a wide range of dissident political groups to gather domestic security intelligence; and the Community Relations Service attempts to work with local leaders to reduce racial tensions. Federal grants administered by LEAA totaled nearly $500 million in fiscal year 1971 and are still rising. The conditions placed on eligibility for these funds, as well as LEAA's own research programs, may profoundly affect the character and quality of American justice.

More important perhaps than these operational changes is the Attorney General's new leadership role. He is looked to more than ever before as a symbol of national criminal justice policy. If, like Ramsey Clark, he emphasizes civil liberties and police professionalization or opposes capital punishment, he strengthens certain elements in the legal profession. On the other hand, if he attacks Supreme Court decisions and political dissenters or endorses wiretapping and pretrial detention, as has John Mitchell, he adds weight to other forces in the law enforcement community. The Attorney General thus exercises crucial influence over the terms of public debate about law, order and justice in America.

THE FEDERAL COURTS

(Continued from page 352)

it must be remembered that the prospect of appeals helps insure that a defendant receives fair treatment before and during trial.[27]

In the long run, the most effective solution will be the lowering of the crime rate itself. The pressures engendered by the steadily increasing number of criminal defendants affect the efficiency of all participants in the criminal justice system and, in spite of good intentions, increase the possibility of errors, some adverse to the defendant and others that may favor him unduly. It is questionable whether any combination of judicial reforms can have any significant effect in reducing the crime rate. The public, however, may grasp at this possible cause and insist on further reforms. Few will quarrel with the desirability of making our system of criminal justice as efficient and fair as possible, whether or not there is any discernible impact on the volume of crime. Justice to the individuals caught up in the enforcement process as well as justice to the members of society requires a constant search for ways to improve the criminal justice process, using criteria of efficiency to be sure, but with an overwhelming concern for the system's capacity to do justice.

[27] For a sympathetic view of the Warren Court's impact on criminal justice see A. Kenneth Pye, "The Warren Court and Criminal Procedure" in R. H. Saylor, et al, eds., *The Warren Court* (New York: Chelsea House, 1968), pp. 58–77.

THE SUPREME COURT

(Continued from page 356)

These practices take place on the street, in the prosecutor's office or in a lower criminal court where noise and confusion dominate the scene.

Some progress would result if the Supreme Court were to require counsel for *all* defendants rather than only for those charged with serious crime. This might help make lower criminal courts places which seem concerned with justice rather than places where people who are mostly poor and confused are dealt with in ways not likely to inspire confidence in the fairness of the system. But even this major new step would not affect street practices of police in cases which never reach court attention. Too often these street practices are unfair and uneffective because "no one cares."

There are hopeful signs that mayors and city councils are beginning to take an interest in the improvement of police practices. The good police administrator has welcomed this interest when it reflects a basic commitment to the improvement of law enforcement

rather than temporary political expediency. There are also signs of increasing community and neighborhood involvement. This is also welcomed by the police administrator who realizes that successful law enforcement is dependent upon broad community interest and support. Increasing numbers of policemen are going to college, reflecting an increasing awareness by police and colleges of the importance and complexity of the police task in urban America today.*

The Supreme Court has furnished a kind of leadership. But achievement of the basic goal of order and justice will require a great deal more. There are both hopeful and discouraging signs today. The decade of the 1970's will tell whether the Supreme Court's efforts of the 1960's are to be an incentive to fundamental improvement or a gallant but ineffectual effort.

*Editor's Note: For more about this problem, see "Police Behavior and the Suspect," by Lawrence P. Tiffany, *Current History*, July, 1971.

BOOKS ON JUSTICE

(Continued from page 364)

Trial. New York: Harper & Row, 1970.

McKean, Dayton D. *The Integrated Bar.* Boston: Houghton Mifflin, 1963.

Marke, Julius J., ed. *The Holmes Reader.* Dobbs Ferry, New York: Oceana Publications, 1964.

Mason, Alpheus Thomas. *Brandeis, A Free Man's Life.* New York: The Viking Press, 1946.

———. *The Supreme Court from Taft to Warren.* Baton Rouge, La.: Louisiana State University Press, 1958.

Mathiesen, Thomas. *The Defences of the Weak.* London: Tavistock, 1965.

Mayer, Martin. *The Lawyers.* New York: Harper & Row, 1967.

Mayers, Lewis. *The American Legal System: The Administration of Justice in the United States by Judicial, Administrative, Military and Arbitral Tribunals.* Rev. ed. New York: Harper & Row, 1964.

———. *Shall We Amend the Fifth Amendment?* New York: Harper & Brothers, 1959.

Mendelson, Wallace. *Justices Black and Frankfurter: Conflict in the Court.* Chicago: University of Chicago Press, 1961.

Mill, John Stuart. *Utilitarianism* [1863].

Murphy, Walter F. *Wiretapping on Trial: A Case Study in the Judicial Process.* New York: Random House, 1965.

——— and C. Herman Pritchett, eds. *Courts, Judges and Politics.* New York: Random House, 1961.

Myrdal, Gunnar. *An American Dilemma.* New York: Harper & Brothers, 1944.

National Commission on Law Observance and Enforcement. *Report on Lawlessness in Law Enforcement* (generally the *Wickersham Report*). Washington, D.C.: Government Printing Office, 1931.

Newman, Edwin S. *Police, the Law and Personal Freedom.* Dobbs Ferry, N.Y.: Oceana Publications, 1964.

Niederhoffer, Arthur. *Behind the Shield—The Police in Urban Society.* New York: Doubleday (Anchor), 1969.

Oaks, Dallin H. "Studying the Exclusionary Rule in Search and Seizure." *University of Chicago Law Review,* Summer, 1970.

——— and Warren Lehman. *A Criminal Justice System and the Indigent.* Chicago: University of Chicago Press, 1968.

Orfield, Lester. *Criminal Procedure from Arrest to Appeal.* New York: New York University Press, 1947.

Ottenberg, Miriam. *The Federal Investigators.* Englewood Cliffs, N.J.: Prentice-Hall, 1962.

Payton, Boyd E. *Scapegoat: Prejudice, Politics, Prison.* Philadelphia: Whitmore Publishing Co., 1970.

"Persons of Interest." (A report on the extent of Army spying on U.S. citizens.) *Life,* March 26, 1971.

"Police in a Democratic Society—A Symposium." *Public Administration Review,* September–October, 1968.

Pound, Roscoe. *The Spirit of the Common Law.* Boston: Beacon Press, 1963.

———. *Organization of Courts.* Boston: Little, Brown, 1940.

———. *The Development of Constitutional Guarantees of Liberty.* New Haven: Yale University Press, 1957.

Pusey, Merlo John. *Charles Evans Hughes.* New York: Macmillan, 1951.

Reiss, Albert J., Jr. *Studies in Crime and Law Enforcement in Major Metropolitan Areas.* Washington, D.C.: Government Printing Office, 1967.

Rosenberg, Maurice. *The Pretrial Conference and Effective Justice.* New York: Columbia University Press, 1964.

Rosenheim, Margaret Keeney, ed. *Justice for the Child: The Juvenile Court in Transition.* New York: The Free Press of Glencoe, 1962.

Schubert, Glendon A. *Judicial Policy-Making.* Chicago: Scotts, Foresman, 1965.

(Continued in Current History, July, 1971)

THE MONTH IN REVIEW

A CURRENT HISTORY chronology covering the most important events of April, 1971, to provide a day-by-day summary of world affairs.

INTERNATIONAL

Berlin Crisis

Apr. 2—The East German government issues a statement that it will not grant Easter passes to West Berliners.

Commonwealth of Nations

Apr. 16—Britain, Australia, New Zealand, Singapore and Malaysia reach a formal agreement on joint defense arrangements for Singapore and Malaysia. The new agreement, which reduces Britain's legal commitment for defense of the area, calls for immediate consultation in the event of an attack.

Disarmament

Apr. 14—The chief Soviet delegate attends the 63d session, in Vienna, of the strategic arms limitation talks between the U.S. and the U.S.S.R.

Apr. 28—U.S. officials reveal that the U.S.-S.R. has proposed a 5-year treaty limiting missile defenses to 100 interceptor missiles to protect each nation's capital; the proposal was made at the SALT talks.

Federation of Arab Republics

Apr. 17—An agreement for the union of Egypt, Syria, and Libya is signed in Libya; plebiscites will be held in the 3 countries on September 1, to obtain the endorsement of the populace for the plan. U.A.R. President Anwar el-Sadat says the union, the Federation of Arab Republics, will have a federal military command.

Middle East

(See also *U.S.S.R.; U.S., Foreign Policy*)

Apr. 1—The Middle East News Agency reports that the U.A.R. will reinstate the cease-fire along the Suez Canal if Israel agrees to the proposal by U.A.R. President Anwar el-Sadat for a partial withdrawal of troops to be followed by the opening of the canal. According to the report, the U.A.R. would agree to a separation of Israeli and Egyptian forces in the Sinai Peninsula, creating in effect a neutral zone.

Apr. 4—In a political speech to the United Israel Labor party, Israeli Premier Golda Meir terms the Sadat proposal "a move to organize pressure on Israel to agree to the opening of the canal in the framework of the imposition on us of an Egyptian-Soviet political settlement."

Apr. 8—According to *The New York Times,* U.S. President Richard Nixon sent a letter to President Sadat last week assuring him of U.S. support for the Egyptian proposal to reopen the canal.

Apr. 19—Premier Meir presents proposals for an arrangement with the U.A.R. that would permit the reopening of the Suez Canal to the U.S. Ambassador to Israel, Walworth Barbour; Israeli Deputy Premier Yigal Allon departs for the U.S. to talk with U.S. Secretary of State William Rogers.

Apr. 20—U.A.R. Foreign Minister Mahmoud Riad returns to Cairo after 4 days of consultations in the U.S.S.R.; the Cairo newspaper *Al Ahram* says that the U.S.S.R. will "activate the political situation."

Organization of American States (O.A.S.)

Apr. 14—Foreign ministers or chief delegates of 23 member countries attend the opening session of the annual General Assembly of the Organization of American States meeting in Costa Rica.

Apr. 15—U.S. Secretary of State William Rogers, addressing the delegates, says that he will begin working with the U.S. Con-

gress on legislation to grant tariff preferences to developing Latin American countries.

Southeast Asia Treaty Organization

Apr. 27—At the opening session of the Southeast Asia Treaty Organization in London, U.S. Secretary of State Rogers calls on Communist China to become involved in an Asia "that respects and accommodates political diversity."

United Nations

(See also *Pakistan*)

Apr. 1—Secretary General U Thant establishes a United Nations fund for drug control; the U.S. donates $1 million.

Apr. 22—India's chief delegate to the U.N. presents a request to Thant for U.N. assistance for refugees from East Pakistan.

War in Indochina

Apr. 5—The U.S. command announces a reduction of 4,600 U.S. troops in South Vietnam; the total number is now 301,900.

Apr. 7—According to *The New York Times,* U.S. pilots who fly over the Ho Chi Minh Trail report that enemy supplies are moving freely along the trial as they did prior to the Laotian operation.

Military spokesmen report that yesterday U.S. helicopters ferried 200 South Vietnamese commandos into Laos in a 10-hour attack on a North Vietnamese base along the supply-trail network.

April 8—South Vietnamese headquarters announces that yesterday there was heavy fighting at 2 fire bases in the Central Highlands in South Vietnam.

The Paris peace talks resume after 3 weeks.

Apr. 11—The U.S. command reports that on April 9 2 U.S. fighter-bombers attacked antiaircraft guns inside North Vietnam.

Apr. 12—U.S. military sources report that U.S. planes have been dropping 7½-ton bombs on North Vietnamese troops which have been attacking the fire base in the Central Highlands. These huge bombs explode laterally and exceed by several tons the largest antipersonnel bombs previously used.

U.S. military officers in South Vietnam say that enemy forces have been increasing their pressure on South Vietnamese forces in Cambodia in the past 6 weeks.

Apr. 13—In Washington, U.S. Secretary of Defense Melvin Laird says that the U.S. will maintain an air and naval presence in Southeast Asia after the withdrawal of ground combat troops.

Apr. 14—South Vietnamese reinforcements arrive at the besieged fire base in the Central Highlands.

Apr. 15—Xuan Thuy, chief North Vietnamese negotiator at the Paris peace talks, returns to the talks after a 7-week absence.

Apr. 21—U.S. helicopters fly about 1,500 South Vietnamese marines to landing zones north of the Ashau Valley in South Vietnam. U.S. advisers claim that the marines are part of 10,000 South Vietnamese troops and 4,500 U.S. servicemen who are expected to take part in a campaign that is planned for the area.

Apr. 23—The U.S. command reports that U.S. fighter-bombers took part in "protective reaction" strikes in North Vietnam and just across the Laotian border yesterday.

ALGERIA

(See also *France*)

Apr. 13—As an outgrowth of stalled negotiations with France, President Houari Boumediene announces a substantial increase in the posted price of Algerian oil and a reduction in wine production.

ARGENTINA

Apr. 1—Interior Minister Arturo Mor Roig announces that the ban on political party activity has been lifted. The government plans to hold a series of meetings with politicians.

AUSTRIA

Apr. 25—Franz Jonas, a Socialist, is reelected to another 6-year term as President of Austria.

BOLIVIA

Apr. 19—Alberto Larrea Humerez, Economics Minister in the former Barrientos government, is assassinated.

BULGARIA

Apr. 19—Leonid Brezhnev, Soviet Communist party leader, heads a Soviet delegation arriving in Sofia to attend the 10th congress of the Bulgarian Communist party.

Apr. 20—Tudor Zhivkov, Bulgarian Communist leader, praises the U.S.S.R. at the opening session of the 10th party congress.

Apr. 25—At the party congress, Zhivkov is reelected first secretary.

CAMBODIA

Apr. 21—Following his resignation yesterday for reasons of ill health, Cambodian Premier Lon Nol is asked to form a new government by Cheng Heng, Chief of State.

Apr. 25—According to *The New York Times,* Lon Nol has agreed to serve again as head of the government.

Apr. 29—Lon Nol is named chief of the armed forces and Lieutenant General Sirik Matak is asked to form a new government.

CEYLON

Apr. 6—The Prime Minister, Mrs. Sirimavo Bandaranaike, announces a 3:00 P.M. to 6:00 A.M. curfew; she bans the Janatha Vimukthi Peramuna movement which is regarded as responsible for attacks on government buildings, security patrols and police stations.

Apr. 7—The government radio announces that armored forces and warplanes have been sent into battle against members of the Janatha Vimukthi Peramuna movement who are known as Che Guevarists.

Apr. 9—Security forces battle the insurgents, and a 24-hour curfew is imposed.

Apr. 10—Fighting continues; the government calls for volunteers to increase the size of the army and decrees the death sentence for anyone aiding the insurgents.

Apr. 13—Prime Minister Bandaranaike, in a radio broadcast, thanks the countries which have supplied aid to Ceylon during the current crisis. *The New York Times* reports that the countries sending aid are: India, Pakistan, Britain and the U.S.

Apr. 15—According to *The New York Times,* North Korea has been asked to close its embassy in Colombo; reportedly the government has evidence of North Korean complicity in the insurrection.

April 16—The government announces that schools will remain closed.

Apr. 18—The government announces the creation of a 7-man committee to "re-establish civil authority."

Apr. 21—The commander of the army, Major General Sepala Attygalle, confirms that the U.S.S.R. is supplying 6 Mig-17's and crews to aid in the battle against the insurgents.

Apr. 24—According to *The New York Times,* the police and the army in Ceylon have resorted to mass arrests, executions and torture in attempting to overcome the insurgents.

CHILE

Apr. 5—The results of yesterday's local elections indicate that candidates of the 5 parties that back President Salvador Allende Gossens' Popular Unity coalition won 49.73 per cent of the votes. The 5 parties are: Communists, Socialists, Radicals, Social Democrats and Popular Socialists.

Apr. 7—The Senate ratifies the new charter of the Organization of American States.

CHINA, PEOPLE'S REPUBLIC OF (Communist)

(See also *Pakistan, U.S., Foreign Policy*)

Apr. 10—Fifteen members of the U.S. table tennis team arrive in China.

Apr. 11—Seven newsmen, including 3 Americans, arrive in China; the 7 have been granted visas to cover the visit of the table tennis team.

Apr. 14—At a reception for the table tennis teams of the U.S., Britain, Canada, Nigeria and Colombia, Premier Chou En-lai offers the regards of the Chinese people to the people of the U.S.

Apr. 15—Another U.S. newsman enters Communist China.

CHINA, REPUBLIC OF (Nationalist)

(See also *U.S., Foreign Policy*)

Apr. 13—The government asks the Gulf Oil Corporation to resume exploration for underseas oil around the Senkaku Islands; the islands are claimed by both Communist and Nationalist China as well as Japan.

Apr. 15—President Joseph D. Mobutu of the Congo begins an 8-day state visit.

FRANCE

(See also *Algeria*)

Apr. 12—Secretary General of the Foreign Ministry Hervé Alphand returns from Algeria after failing to settle the dispute over French oil activities in Algeria.

Apr. 15—The Foreign Ministry calls the continuation of negotiations between France and Algeria purposeless; Alphand, back in Algeria, hands a note to the same effect to the Algerians; the note also indicates that the Algerians will get no special favors as far as French investment is concerned.

Apr. 19—A Foreign Ministry spokesman says that France will block the delivery of *Mirage* jets to Libya if she discovers that the jets are being sent to other countries.

Apr. 20—Addressing the National Assembly, Premier Jacques Chaban-Delmas presents a heavy program of legislation and says that time is needed to achieve social reforms in France.

Apr. 21—In the National Assembly, a motion to censure Premier Chaban-Delmas receives only 95 votes out of 487.

GERMANY, DEMOCRATIC REPUBLIC OF (East)

(See *Int'l, Berlin*)

GERMANY, FEDERAL REPUBLIC OF (West)

Apr. 20—The West Berlin Parliament reelects Klaus Schütz to a 4-year term as mayor.

GREECE

Apr. 17—The office of Premier George Papadopoulos issues a statement declaring that 5 categories of offenses which had formerly been tried by courts martial will now be tried by civil courts.

Apr. 21—Addressing the nation in broadcasts to honor their 4th year in power, Greek leaders outline their chief goals; these include education, social justice and economic development.

Apr. 23—U.S. Secretary of Commerce Maurice Stans, who arrived in Athens yesterday on a 6-nation tour to promote trade, applauds ". . . the sense of security that the Government of Greece" has established for American companies with operations there.

HAITI

Apr. 22—The government radio announces the death last night of President François Duvalier; his son, Jean-Claude, is sworn in as the new "President for Life."

HUNGARY

Apr. 27—The results of the election held on April 25 are announced; the general election, the first in which voters in a Communist government had a choice between official and nonofficial candidates, resulted in the unseating of 8 incumbent members of Parliament.

INDIA

(See also *Intl, U.N.; Pakistan*)

Apr. 16—The Indian government charges the Pakistani Army, operating in East Pakistan, with "savage and medieval butchery" and "systematic genocide."

ISRAEL

(See *Intl, Middle East*)

ITALY

Apr. 3—According to *The New York Times*, members of the ultraleftist Worker Power faction have been battling police and Communist party workers in a poor suburban area of Rome for the past week.

Apr. 19—Shen Ping, the first Ambassador to

Italy from Communist China, arrives in Rome.

JAPAN

Apr. 12—In local elections yesterday, conservative candidates, members of the Liberal-Democratic party, defeated most of the candidates supported by the Socialists and the Communists; in Tokyo and Osaka the leftist candidates were victorious.

JORDAN

Apr. 2—Palestinian guerrillas reveal that they are carrying out military operations in Jordan to force King Hussein to replace Premier Wasfi Tal and to dismiss high-ranking army officers whom the commandos hold responsible for recent clashes; fighting is reported in Jordan.

Apr. 3—King Hussein issues a statement indicating that he will stand firm against the commandos and pressure from other Arab countries.

Apr. 5—Yasir Arafat, leader of the Palestinian commandos, denies reports that the commandos will withdraw from Amman; he says that they will continue to fight against the government of King Hussein and that they need to use Jordan as a base of operations against Israel.

Apr. 6—King Hussein warns that the Palestinian guerrillas must remove their weapons from Amman within 2 days.

Apr. 9—Major General Mustafa Tias, the Syrian Chief of Staff, announces a new agreement between the Palestinian guerrillas and King Hussein.

Apr. 10—Ambassadors or chargés d'affaires from Algeria, Kuwait, Lebanon, Libya, the Sudan, Syria, the United Arab Republic, Yemen and Southern Yemen meet in Cairo to discuss ways of ending the fighting in Jordan.

Apr. 12—The government reports fighting in northern Jordan as truckloads of commandos leave Amman.

Apr. 14—The Amman radio reports that Jordanian troops, engaged in a house-to-house search, have found large quantities of weapons.

KOREA, REPUBLIC OF (South)

Apr. 28—Incomplete returns in yesterday's election indicate that President Chung Hee Park has a substantial lead; the Democratic-Republican candidate is seeking his 3d term.

LAOS

(See *Intl, War in Indochina*)

LIBYA

(See also *Intl, Federation of Arab Republics*)

Apr. 2—Libyan Deputy Premier, Major Abdul Salam Jallud, announces that Libya signed an agreement with 25 Western oil companies today which increases the posted price of Libyan oil from $2.55 a barrel to $3.45 a barrel.

NETHERLANDS

Apr. 29—After 28 parties compete in yesterday's election for the 150-seat Second Chamber (lower House), the ruling center-right coalition is reported to have lost 9 seats, dropping from 83 to 74 seats. The Chamber will meet May 11 to propose a new Premier to succeed Premier Joseph M.A.H. Luns, who is retiring to become Secretary General of the North Atlantic Treaty Organization.

PAKISTAN

Apr. 6—Replying to a message from President Nikolai Podgorny of the Soviet Union, President Agha Mohammad Yahya Khan defends the use of force in East Pakistan and says that he intends to start talks with "rational representative elements in East Pakistan at the earliest opportunity." Podgorny's message, received on April 2, had called for an end to the bloodshed.

Apr. 8—According to *The New York Times,* the top leaders of the East Pakistan independence movement have all been captured by West Pakistani forces.

Heavy fighting continues in East Pakistan, and the Pakistani government announces that it has launched air strikes against pockets of resistance.

Apr. 11—The government reports that its

army wiped out 2 companies of Indian troops in East Pakistan yesterday.

Apr. 12—A message from Communist Chinese Premier Chou En-lai to President Yahya is made public; the message expresses Chinese support of the government; on April 6, a Chinese note was sent to India charging Indian interference in internal Pakistani affairs.

Apr. 13—A *New York Times* correspondent reports that members of the secessionist movement in East Pakistan have formed a Cabinet and have named Sheik Mujibur Rahman, who is reportedly in prison, as their president.

Apr. 18—Pakistan's diplomatic mission in Calcutta, India, is taken over by the predominantly East Pakistani staff and declared to be a mission of the newly proclaimed government of Bangla Desh.

Apr. 20—The government demands that India oust the East Pakistanis who are holding the diplomatic mission in Calcutta.

Apr. 22—The Pakistan radio reports that India has conveyed assurances to Pakistan that she does not recognize the Bangla Desh government.

Apr. 23—The Pakistan radio announces that the government has decided to close its mission in Calcutta.

Apr. 27—In a radio broadcast from Karachi, it is reported that the "entire coastal region of East Pakistan" is completely under government control.

SOUTH AFRICA, REPUBLIC OF

Apr. 13—Kaiser Matanzima, the chief minister of the Transkei, South Africa's partly independent black tribal homeland, asks for more freedom from South Africa rule.

Apr. 14—President James Foehe, at the opening of the Transkei legislative assembly, indicates that he does not intend to accede to the requests of Kaiser Matanzima.

Apr. 22—Prime Minister John Vorster announces a relaxation of certain racial policies that will permit white and non-white participation in certain international sports events.

SYRIA

(See also *Intl, Federation of Arab Republics*)

Apr. 3—Major General Abel Rahman Khleifawi forms a new Cabinet.

TURKEY

Apr. 26—Justice Minister Ismail Arar announces that martial law has been imposed in 11 provinces.

U.S.S.R.

(See also *Bulgaria*)

Apr. 1—Enrico Berlinguer, Deputy Secretary General of the Italian Communist party, and President Nicolae Ceausescu of Rumania, addressing the Soviet Communist party's 24th congress, assert their right to pursue policies that differ from those of the U.S.S.R.

Apr. 3—Addressing the party congress, Foreign Minister Andrei Gromyko calls on U.S. President Richard Nixon to support his stated desire for improved relations with the U.S.S.R. "by practical deeds."

Apr. 5—The party congress formally endorses the foreign and domestic policies presented in the main report to the congress which was presented by the General Secretary, Leonid Brezhnev, on March 30.

Apr. 6—Premier Aleksei Kosygin, in his economic report to the party congress, calls for an all-European conference (which the U.S. and Canada may also attend) to pave the way for joint projects such as the construction of an electric power grid encompassing Europe.

Kosygin also says that a greater share of government investment will be channeled into consumer goods and agriculture in the next 5-year period.

Apr. 9—General Secretary Brezhnev, addressing the closing session of the party congress, announces that all 25 men who held Politburo or Secretariat posts were reelected by the newly chosen Central Committee.

Apr. 10—Leonid Brezhnev appears to be the most important of the Soviet leaders as newspapers in the U.S.S.R., reporting on the party congress, list the reelection of Brezhnev as General Secretary ahead of

the election of members of the Politburo and Secretariat.

According to *The New York Times,* U.S. officials report that the U.S.S.R. has airlifted advanced jet fighter planes to the U.A.R. The U.S.S.R. has also sent other fighter planes to the U.A.R. by ship.

Apr. 23—*Tass,* the Soviet press agency, announces that Soyuz 10, a spacecraft manned by 3 men, has been launched today; the mission of the spacecraft is to perform a series of experiments with an unmanned satellite which was launched on April 19.

Apr. 25—Soyuz 10 returns to earth after 2 days of experiments in orbit with the satellite.

Apr. 30—It is reported by reliable Western sources in Moscow that 1,3000 Jews have been allowed to migrate to Israel in April. This is thought to be the largest number of Jews allowed to leave the Soviet Union in one month since Israel was founded.

U.A.R.

(See also *Intl, Middle East; U.S.S.R.*)

Apr. 4—The Minister of Industry and Petroleum says that a recent discovery of oil west of Cairo may place the U.A.R. in the ranks of major oil producing nations.

UNITED KINGDOM

Great Britain

Apr. 7—Workers at the Ford Motor Company's British operations vote to end a 9-week strike; the agreement calls for wage increases of 33 per cent over the next 2 years.

Apr. 14—The British Post Office announces that a direct telephone connection between Britain and Communist China will be reestablished tomorrow.

Apr. 22—Ministers of Britain and France, meeting in London, agree to the construction of 4 more production models of the *Concorde,* their supersonic aircraft.

Northern Ireland

Apr. 3—British troops uncover caches of arms in raids in Roman Catholic areas of Belfast.

Apr. 11—10 British soldiers are injured in rioting in Londonderry.

UNITED STATES

Agriculture

Apr. 22—Secretary of Agriculture Clifford Hardin asks for legislation on farm credit to ease the problems caused by drought in the Southwest.

Civil Rights

(See *U.S., Supreme Court*)

Conservation and Pollution

Apr. 30—Administrator of the Environmental Protection Agency William Ruckelhaus announces "tough" national air quality standards for 6 principal pollutants.

Demonstrations

(See also *U.S., Government*)

Apr. 19—In Washington, D.C., about 1,000 veterans of the war in Indochina begin a week-long demonstration against U.S. involvement there.

Apr. 24—In Washington, D.C., an estimated 200,000 people gather to protest U.S. involvement in the war in Indochina.

Economy

Apr. 2—The Labor Department reports that the unemployment rate rose to 6 per cent in March.

Apr. 13—The President's Council of Economic Advisers issues its third "inflation alert"; the alert cites increases in wages and prices in various industries including the steel industry.

Apr. 28—On the N.Y. Stock Exchange, trading volume reaches 24.82 million shares, the 3d highest level in history. The Dow-Jones industrial average closes at a 23-month high, 950.82.

Foreign Policy

(*See also Intl, Middle East* and *War in Indochina; Greece*)

Apr. 7—In a nationwide radio and television address, President Richard Nixon says that

he intends to withdraw 100,000 more U.S. servicemen from South Vietnam by December 1, 1971; the President terms the Laotian invasion and the Vietnamization program a success; he refuses to set a date for the final withdrawal of all U.S. troops.

In a letter to Jordanian King Hussein, Secretary of Defense Melvin Laird says that the U.S. will increase its military aid to Jordan.

At a news conference, Graham B. Steenhoven, president of the U.S. Table Tennis Association, announces that his group has accepted an invitation from the Chinese Table Tennis Association to visit Communist China; they will be the first sizeable group of Americans to visit Communist China since the mid-1950's.

Apr. 9—A State Department spokesman reports that U.S. oil companies risk the seizure of their ships if they persist in exploring for oil deposits near the Senkaku Islands in the East China Sea; the disputed islands are claimed by Japan, Communist China and Nationalist China.

Apr. 13—Robert McCloskey, State Department spokesman, acknowledges that the U.S., since 1967, has been selling about $2.5-million worth of ammunition to Pakistan yearly.

Apr. 14—A statement by President Nixon is released in which he announces a relaxation of the trade embargo with Communist China; visas for visitors from Communist China will be expedited.

Apr. 15—President Nixon's press secretary, Ronald Ziegler, says that the recent relaxation of tension between the U.S. and Communist China is "in no way related to our relations with the Soviet Union."

Nixon asks Congress to ratify the international convention on airplane hijackers.

Apr. 16—In an interview, the President says that the U.S. will continue to use its air power against North Vietnam and North Vietnamese forces as long as that country holds any U.S. prisoners and that a small U.S. force will remain in South Vietnam as long as necessary.

Apr. 19—According to *The New York Times*, the U.S. is delivering 12 more Phantom fighter-bombers to Israel under an agreement which was reached in the fall of 1970.

Apr. 20—White House press secretary Ziegler denies recently published reports that Vice President Spiro Agnew is not in accord with President Nixon's liberalized policies on Communist China.

Apr. 21—In a message to Congress, the President proposes a major revision of military and economic foreign aid for the fiscal year beginning July, 1971; he requests an appropriation of $3.2 billion for the programs.

The president of the U.S. Table Tennis Association, following a meeting with President Nixon, says that the President has indicated that he will cooperate with the Table Tennis Association's invitation to the Chinese Communist team to visit the U.S.

Apr. 26—A special presidential commission headed by Henry Cabot Lodge, a former U.S. chief delegate to the U.N., submits a report recommending that the U.S. seek to have Communist China admitted to the U.N. without the expulsion of Nationalist China.

Government

(See also *Demonstration, Military*)

Apr. 1—President Nixon orders First Lieutenant William Calley, Jr., released from the stockade at Fort Benning, Georgia, and returned to his quarters at the base pending review of his murder conviction.

Apr. 2—Following a meeting with California Governor Ronald Reagan, Secretary of Health, Education and Welfare Elliot Richardson, and Budget Director Caspar Weinberger, President Nixon postpones the cutoff of federal welfare funds for California; HEW has ruled that the state does not comply with federal welfare regulations.

A U.S. District Court judge in Washington rules that it is unconstitutional for members of Congress to hold commissions in military reserve units.

John Ehrlichman, presidential adviser, announces that the President will personally review and decide the case of Lieutenant Calley before any final sentence is carried out.

Apr. 3—President Nixon announces that he will direct the Department of Defense to make its regulations on abortions at military bases throughout the U.S. conform to the laws of the states in which the bases are located.

Apr. 5—Hale Boggs (D., La.), Democratic leader in the House, calls for the resignation of J. Edgar Hoover as director of the Federal Bureau of Investigation; Boggs accuses the bureau of tapping the telephones of members of Congress and stationing agents on campuses to spy on students and faculty.

Apr. 6—President Nixon sends his revenue-sharing program on education to Congress; the plan calls for the consolidation of 108 existing programs into a single plan which would cost $3 billion.

Apr. 7—Deputy Attorney General Richard Kleindienst defends the F.B.I. and calls for an investigation by "responsible members of Congress."

In a message to Congress, the President calls for federal funds to improve the quality of life in the District of Columbia.

Apr. 8—A federal court of appeals rules that government wiretapping of radical groups without court approval is a violation of the Constitution.

The House Interstate and Foreign Commerce Committee issues a subpoena to the Columbia Broadcasting System requiring that the network make available all material, whether or not it was broadcast, that pertains to the television documentary, "The Selling of the Pentagon." The network, through its president, replies that it will not make available material that was not actually broadcast.

Apr. 9—The President announces that he will ask for a $64.3-million supplementary appropriation to be used for the employment of disadvantaged youths in the summer of 1971.

Apr. 14—The Director of the Central Intelligence Agency, Richard Helms, delivers a speech defending his agency.

Apr. 15—Vice President Spiro Agnew says that he has granted permission for an anti-war group to hold a rally on the West Lawn of the Capitol.

Apr. 16—During a panel session with reporters and editors, President Nixon says that recent attacks on the director of the F.B.I. have been unfair and malicious.

Apr. 19—Addressing a meeting of the Republican Governors Conference, the President emphasizes the work requirement aspects of his welfare reform programs.

Apr. 21—At its final session, the White House Conference on Youth, meeting in Estes Park, Colorado, makes a number of recommendations including the ending of racism in the U.S. and an immediate end to U.S. involvement in the Indochina war.

Apr. 22—A U.S. district court judge dissolves an injunction forbidding camping on the Mall in Washington by veterans of Vietnam demonstrating against that war; the judge rebukes the Justice Department for first having sought the injunction and then failing to enforce it.

Apr. 27—Addressing the U.S. Chamber of Commerce, Secretary of the Treasury John B. Connally, Jr., says that, despite charges that the plan to reduce business taxes is politically motivated, it will become effective, retroactive to January, 1971.

Apr. 30—Federal District Court Judge Howard Corcoran rules to allow the inauguration of Amtrack, the National Railroad Passenger Corporation, on May 1, despite Senate and other protests. A 3-judge appeals court panel upholds Judge Corcoran's ruling.

Labor

Apr. 1—A 3-judge federal court in Washington rules that there is no constitutional guarantee of the right to strike and that government workers can be barred from striking.

Apr. 18—An 11-week old teachers' strike ends in Newark, New Jersey, as the Board of

Education and the Newark Teachers' Union vote to accept a contract proposed by Mayor Kenneth Gibson.

Apr. 28—A federal district judge rules that the United Mine Workers and its welfare and retirement fund and the union-owned National Bank of Washington participated in a conspiracy to defraud miners and miners' widows; the defendants will be jointly liable for millions of dollars in damages.

Military

Apr. 1—Secretary of Defense Melvin Laird announces that by the end of next year he will make the final decision on where to relocate the naval training targets that are now on Culebra; the relocation will end a 13-year struggle by the residents of the Puerto Rican island to end the use of the targets.

Apr. 2—In an interview, former Army captain Robert Marasco says that he shot and killed a South Vietnamese suspected of being a double agent 2 years ago on "oblique yet very, very clear orders" from the Central Intelligence Agency. Marasco was one of 8 Special Forces personnel who were charged, but never tried, on charges of the killing.

Apr. 6—A letter by Captain Aubrey Daniel 3d, prosecutor in the Army court martial of First Lieutenant William Calley, Jr., to President Nixon is made public; the letter criticizes the President's intervention in the case and his failure to lead the nation in support of "the law of this land on a moral issue . . . about which there can be no compromise." (See also *U.S., Govt.*)

Apr. 9—Major General Carl Turner, who was provost marshal general from 1964 to 1968, pleads guilty in a U.S. district court to soliciting unlawfully 136 firearms from Chicago police and retaining them for his own use.

Apr. 28—The Navy announces the selection of 49 men to be promoted to rear admiral, including Captain Samuel L. Gravely, the first Negro to be named admiral.

Politics

Apr. 6—Richard J. Daley, Democratic Mayor of Chicago, is reelected to a fifth term.

Apr. 18—James Charles Evers, the Mayor of Fayette, Mississippi, is nominated for the office of governor of that state by the integrated "loyalist" Mississippi Democratic party.

Supreme Court

Apr. 5—In a unanimous decision, the Court rules that the federal law which makes it illegal to possess unregistered sawed-off shotguns and automatic weapons and such devices as grenades and bombs is constitutional.

In a 5-to-4 decision, the Court rules that a law, which grants citizenship to persons born abroad of one U.S. parent but revoking that citizenship for persons who do not reside in the U.S. for 5 consecutive years prior to their 28th birthdays, is constitutional.

Apr. 20—In a unanimous decision, the Court rules that busing to end the dual system and to achieve racial balance in school systems in the South is constitutional.

Apr. 26—In a 5-to-3 vote the Court rules that a California law, requiring that the majority of voters in a city, town or county must approve the construction of federally financed low-rent housing projects, is constitutional.

VATICAN

Apr. 16—Hungarian Foreign Minister Janos Peter has an audience with Pope Paul VI.

VIETNAM, DEMOCRATIC REPUBLIC OF (North)

Apr. 11—General elections—the first since 1964—are held for the 420 seats in the National Assembly.

YUGOSLAVIA

Apr. 28—President Tito and Yugoslav Communists begin talks on how to reconcile rival nationalist groups and reform the federal structure.

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